

*AMERICA v. AMERICA*: HOW MEDIA FUELS PARTISANSHIP IN THE  
SUPREME COURT CONFIRMATION PROCESS

by

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## **Abstract**

Filling a seat in the Supreme Court of the United States is arguably one of the most politically divisive actions the President and the Senate must take. Since the early 1980s the legal philosophies held by Justices of the Supreme Court have been gradually nearing the spectrum extremities. Presidents began to nominate judges whose judicial ideologies were more directly aligned with the wishes of their base of voters and outside interest groups. The result was a dramatic polarizing effect when the President and the Senate has to fill a vacancy on the Court. This increase in partisan sentiment and loyalty has been fueled by a three-pronged media engine. Televised, digital, and print media operate in a way that engages, then incites political action on behalf of the consumer. The ubiquitous nature of these forms media means their polarizing effects are nearly impossible to avoid or even recognize.

## **Dedication**

This thesis is dedicated to my entire Mitchell & Degnan family who constantly supported my education and career in politics and government. Without their unwavering encouragement I would not be doing what I love to do every day. I particularly want to thank my parents Michael & Nina who have been by my side at every turn. Their enduring love, their guidance, and steadfast support has made me into the man I am today. All of my successes and all that I have achieved has been thanks to you. Words cannot describe how grateful I am for you both nor can they describe how much I love you. I also want to thank my siblings Sean, Ryan, Emily, and Jack. You all have been the best friends I could have ever asked for. You all are my role models and I am so proud to be apart of our team. No matter the physical distance separating us, I am never alone because I carry you all in my heart everywhere I go. I love and miss you each and every day and look forward to all being together again soon. To my family, I owe everything to you. Family over everything.

## Table of Contents

<b>Abstract .....</b>	<b>ii</b>
<b>Introduction .....</b>	<b>1</b>
<b>Chapter 1: Media on the Screen .....</b>	<b>14</b>
<b>Chapter 2: The Social Component of the Court .....</b>	<b>49</b>
<b>Chapter 3: Supreme Tangibility .....</b>	<b>79</b>
<b>Conclusion .....</b>	<b>112</b>
<b>Bibliography .....</b>	<b>131</b>
<b>Curriculum Vitae .....</b>	<b>139</b>

## Introduction

Partisanship has not always been a part of American life. In fact, the Founding Fathers constantly railed against the idea of factions or partisan identity. These men rejected party affiliation because it would force tribalist ideas and tendencies by elected officials. As opposed to doing right by an entire constituency, politicians only had to appeal to their faction in order to maintain power.<sup>1</sup> In *Federalist 10* James Madison discusses how factions and partisanship makes our democracy more unstable as an “Us versus Them” mentality begins to arise.<sup>2</sup> However, the 1800 presidential election essentially justified partisan tactics. Since that election 220 years ago partisanship has been a key aspect of American political culture. Today, we experience partisanship daily and in a much more dramatic fashion, particularly when filling vacancies on the United States Supreme Court. The reality is every action has a political motivation behind it. The news we watch, the businesses we frequent, and even the way in which we are raised have become politicized in contemporary American culture. The difference in America now compared to the time of Madison, Hamilton, and Jefferson is these actions are constantly dissected, examined, and then either celebrated or ridiculed. One of the most common places for this partisan combat to appear is during the confirmation process for potential Justices to the United States Supreme Court. This once apolitical, non-controversial institution now stands as ground-zero for some of the most contentious political fights we see in modern day America. The real question we as Americans should be asking ourselves is how did we get here?

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<sup>1</sup> Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers (Annotated): A Collection of Essays Written in Favour of the New Constitution* (Coventry House Publishing, 2015)

<sup>2</sup> Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers (Annotated): A Collection of Essays Written in Favour of the New Constitution* (Coventry House Publishing, 2015)

This thesis will find answers to the question of how we became so polarized with regards to the Supreme Court confirmation process. In this age of instant access to television, social media, and written news, a few likely suspects appear that seem responsible for inflaming our current hostilities with those who disagree with us politically. This thesis contends these three forms of media are primarily responsible for driving an ideological wedge between not just Republicans and Democrats, but also between co-workers, neighbors, friends, and families during Supreme Court nominations. In this thesis, the role of television, social media, and print media will be examined to see what impact, if any, these mediums have on the Supreme Court confirmation process as a whole. To support these claims this thesis will refer to dozens of scholarly articles and research in an attempt to show television, social media, and print media are major contributors to the hyper-partisan atmosphere we are witnessing today in America with respect to the highest court in the land.

It is first important to recognize the role the media plays in this process. The media obviously does not pick a nominee for the Supreme Court. This power to nominate judicial candidates first resides with the President of the United States. The Constitution of the United States grants the president this power under Article II, Section II, Clause II which is commonly referred to as the Appointments Clause.<sup>3</sup> This clause empowers the president to nominate individuals to public office, including the Supreme Court. Upon the president's nomination the task of confirmation then falls on the United States Senate. The Senate's role, according to the Constitution, is to confirm these nominees through a process referred to as advice and consent.<sup>4</sup> Traditionally, the

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<sup>3</sup> U.S. Constitution, art. 2, sec. 2, cl. 2.

<sup>4</sup> U.S. Constitution, art. 2, sec. 2, cl. 2.

process begins by having the Supreme Court nominee meet with senators of both parties and Senate leadership as a sort of introduction to members of the higher chamber of Congress. Here, the nominee is asked questions on where he or she stands on certain legal issues or questions on their judicial philosophy. After this introduction the Senate Judiciary Committee holds a hearing to ask the nominee questions under oath about their previous rulings in lower courts, their thought process on controversial precedent or legislation, or any other subject senators deem relevant. The purpose of the hearing is to demonstrate a nominee's qualifications and merits that would make them suitable, or unsuitable, for a lifetime appointment to the Supreme Court. After a majority vote in favor of confirmation within the Senate Judiciary Committee, the confirmation is then brought to the floor of the Senate. Here, senators rise in favor or opposition of a certain nominee. Once the time for floor debate ends the whole body votes on the confirmation. After the vote is completed, there is either a new member of the Supreme Court or a confirmation that failed to gain enough favorable votes.

While this nominee is attempting to shore up support in Congress he or she is simultaneously introduced to the country through the American media. His or her resume, rulings, and judicial philosophy are broadcast on essentially every television network, social media platform, or newspaper across the country thus beginning the partisan fight throughout constituencies across America. The overall success or failure of confirmation depends on the ensuing messaging battle waged by both political apparatuses and outside interest groups. These actors want to ensure their values are represented on the Supreme Court and are willing to spend their time and money fight-

ing for their desired outcome in the Senate. Herein begins the discussion on the role media plays in amplifying partisan sentiment during the confirmation process.

### **The Lead Up to the Modern Day Court**

Renowned author and political theorist Alexis de Tocqueville accurately predicted the rise of both the power and importance of the federal judiciary in Washington and throughout the country. In de Tocqueville's *Democracy in America* he describes how he frequently experienced political differences morph into judicial challenges. Therefore, political actors tended to be well versed in the law in order to see political goals achieved. This claim by Alexis de Tocqueville is important in our understanding of how the Court evolved and how it is utilized today. De Tocqueville wrote:

There is hardly any political question in the United States that sooner or later does not turn into a judicial question. From that, the obligation that the parties find in their daily polemics to borrow ideas and language from the judicial system. Since most public men are or have formerly been jurists, they make the habits and the turn of ideas that belong to jurists pass into the handling of public affairs. The jury ends up by familiarizing all classes with them. Thus, judicial language becomes, in a way, the common language; so the spirit of the jurist, born inside the schools and courtrooms, spreads little by little beyond their confines; it infiltrates all of society, so to speak; it descends to the lowest ranks, and the entire people finishes by acquiring a part of the habits and tastes of the magistrate.<sup>5</sup>

There are few quotes that better illustrate the view and importance of the Court and how it has evolved since the 19th Century. Essentially what de Tocqueville argues is political fights will inevitably find their way to the American judiciary. Then, because of the frequency of this now normalized process, the legal results will be disseminated

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<sup>5</sup> Alexis de Tocqueville, *Democracy in America* (New York: Library of America Paperback Classics, 2012), p.411)



and eventually affect the general public. It is fair to say the modern judiciary behaves in a similar way to de Tocqueville's theory. Political elites in Washington challenge partisan legislation all the time. All one needs to do is look at the cases on the docket of the Supreme Court to validate this claim. Legal challenges allow political actors to delay, erode, and politicize the legislation of their political rivals in order to ensure certain politically motivated policy interests are protected. The idea is these challenges can give legislative wins without the need for a majority in Congress or control of the White House. This is also why the nomination and confirmation processes associated with the federal judiciary have become so polarized. When political actors cannot ensure their interests legislatively they turn to their attention to the courts. Understanding this concept from Alexis de Tocqueville is a crucial first step in understanding the motivation behind the partisan responses we will investigate in this thesis.

For most of the Court's history the confirmation process was much more civil and bipartisan. Up until the 1980s Supreme Court nominations were considered respectful and certainly caused less hysteria within the public and with elected officials. In fact, the president traditionally was not seen as a political actor when filling vacancies on the Court, but rather he was seen as the, "Leader of the Free World" and he and his agenda were treated with respect. Similarly, both the Majority and Minority Leaders in the Senate were seen as colleagues and party affiliation was cast aside when working on something as honorable as the Supreme Court. This resulted in the political and legal elites deciding who would eventually don a black robe. This old way of conducting confirmations prevented politics from invading the process because decisions were made behind doors, and were not for public consumption. As this

changed so did the way we viewed the process.<sup>6</sup> When the old confirmation system began to deteriorate, so too did the conventional way the political and judicial communities behaved during Supreme Court vacancies. Psychologists and political scientists have argued that as the Court began gaining more significance in modern American society, legal scholars and jurists began to pressure and persuade Supreme Court nominees to remain loyal to their judicial philosophy. A tribalist approach to Supreme Court nominees began to form as political entities, like the President or national partisan committees, began to reward ideological loyalty with seats on the bench. This pressure over time yielded two wildly different philosophical schools of judicial thought which emulated our two-party political system. The two differing groups of constitutional originalists and living constitutionalists became fiercely loyal to their own.<sup>7</sup>

The 1980s also indicated a shift in how politicians and outside interests viewed the Supreme Court. Before the 1980s, while ideological divides existed they were not as dramatic as we see today. Scholars also argue that this was a result of political elites, both within and outside of government, having more power. This political power was commonly obtained by the spending of millions of dollars to alter election outcomes.<sup>8</sup> Similarly, a process of “affective polarization” became more prominent in the early 1980s whereby Republicans and Democrats began to see each other in a more negative light. They began to see each other more as the opposition or the enemy and

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<sup>6</sup> Richard Davis, *Electing Justice: Fixing the Supreme Court Nomination Process* (New York: Oxford University Press, 2005)

<sup>7</sup> Neal Devins and Lawrence Baum, *The Company They Keep: How Partisan Divisions Came to the Supreme Court* (Oxford: Oxford University Press, 2019)

<sup>8</sup> Neal Devins and Lawrence Baum, *The Company They Keep: How Partisan Divisions Came to the Supreme Court* (Oxford: Oxford University Press, 2019), 172)

less like colleagues.<sup>9</sup> These main factors, along with numerous other reasons, essentially initiated the ideological chasm seen on the Supreme Court. Since the 1980s this divide has grown wider as more justices have been confirmed to the Supreme Court who espouse ideologies closely tied to national political party platforms.

These two ideological groups have since been fluctuating back and forth between being the minority and majority presence on the Supreme Court. Today, the Supreme Court is divided 5-4 in favor of the conservative-leaning ideology of constitutional originalism or textualism. This school of judicial thought is predicated on the idea that judges should interpret the Constitution in its original form and abide by its text. This school is adamantly opposed to extrapolating legal authority from the Constitution that goes beyond what the words written in the document meant at the time they were drafted. This philosophy is opposed by living constitutionalists who believe the Constitution is a living document and should be interpreted through a modern lens. Living constitutionalists believe in maintaining the Constitution's intent and spirit of the law as opposed to strictly adhering to text and precedent.<sup>10</sup> These two philosophies both have sympathetic advocacy groups who work alongside elected officials to place judges throughout the federal judiciary. This judicial conflict is never-ending. Administrations change, congressional majorities swing back and forth, and the Supreme Court will always have vacancies that need to be filled. Recently, however, these confirmations have had higher stakes and therefore the contest associated with the confirma-

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<sup>9</sup> Neal Devins and Lawrence Baum, *The Company They Keep: How Partisan Divisions Came to the Supreme Court* (Oxford: Oxford University Press, 2019), 172)

<sup>10</sup> Randy Barnett, "Constitutional Clichés," *Georgetown Law Scholarship* 36 (2008): pp. 493-510)

tion process has become more expensive, more combative, and more partisan.<sup>11</sup>

### **Historical Factors Relevant to the Nomination Process**

Starting in the late 19th Century the nomination process and subsequently the politicization of the Supreme Court began to change. Despite political affiliation in years past, the president was usually able to work with the leadership from both sides of the aisle to get Supreme Court nominees confirmed to the bench. This system was full of elitist tendencies and therefore the American people were rarely consulted. Additionally, most of these nominees were universally approved out of the Judiciary Committee and were then overwhelmingly confirmed by full vote of the Senate. However, the moment TV cameras were introduced within committee hearing rooms these confirmation certainties became more politicized in ways they had not been before.<sup>12</sup> According to multiple studies, bringing a camera into committee hearings or court rooms inherently changed the outcomes because of instinctive human behavior.<sup>13</sup> As is presented in the famous Heisenberg Uncertainty principle, or Schrodinger's Cat experiment, the mere act of observing an experiment changes the outcome. This fact is no less true in the Senate Judiciary Committee hearing room.

Similarly, in years past the confirmation process had a closer tie to presidential popularity than it did with presidential party affiliation. There is an observable correlation between the confirmation vote totals in recent memory and party affiliation. Simply put, senators became more likely to vote for or against a nominee based off the presi-

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<sup>11</sup> Mark Silverstein, *Judicious Choices: The Politics of Supreme Court Confirmations*, 2nd ed. (W.W. Norton & Company, 2007))

<sup>12</sup> David Grey, *The Supreme Court and the News Media* (Ann Arbor, MI: University of Michigan, 1991)

<sup>13</sup> Ralph E Roberts, "An Empirical and Normative Analysis of the Impact of Televised Courtroom Proceedings," *SMU Law Review* 51, no. 3 (1998): pp. 621-666)

dent's political party. More opposition party senators began to vote against confirmations while same party senators voted in support of the president's nominees.<sup>14</sup> Lastly, the most famous failed confirmation, which scholars have argued was the catalyst for the partisanship we see within the Court today, was that of Judge Robert Bork. Judge Bork was 1 of only 12 failed nominations which reached the full chamber in American history and is also the most recent. Bork's failed confirmation at the time was the first Supreme Court nomination rebuke in almost 20 years, reopening the precedent to do so.<sup>15</sup>

### **The Media as a Political Actor**

A key pillar of this discussion is viewing the media not as an apolitical institution, but rather to see the media as the "Fourth Branch" of the federal government<sup>16</sup>. By removing this badge of objectivity the media wears we can clearly see the media drives partisanship. One way to show this is through careful research into the specific rhetoric used by media outlets when discussing or describing the Supreme Court. Written and spoken word, whether it is overt in its intent or not, has tremendous effect on how the readers perceive certain situations within the Supreme Court. By simply adding adjectives to news stories such as "liberal" or "conservative" brings on a tribal connotation to the nomination process of the Court. Without publicly taking sides, media companies can attach political loyalties to a non-partisan Court. The result is a knee jerk parti-

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<sup>14</sup> Norman C. Thomas and Joseph A. Pika, *The Politics of the Presidency* (Washington: CQ Press, 1996)

<sup>15</sup> Norman Vieira and Leonard Gross, *Supreme Court Appointments: Judge Bork and the Politicization of Senate Confirmations* (Carbondale, IL: Southern Illinois University Press, 1999)

<sup>16</sup> Rachael Luberda, "The Fourth Branch of the Government: Evaluating the Media 's Role in Overseeing the Independent Judiciary," *Notre Dame Journal of Law, Ethics & Public Policy* 22, no. 2 (January 2014): pp. 507-532)

san reaction from the American public to any judicial action or nomination.<sup>17</sup> Along these lines, it is important to not only examine the media actors and their partisan association, but it is important to analyze the content used as a catalyst for political division. Traditionally, more liberal judicial decisions rendered get more coverage and are given more prominent positions within a media outlet's news cycle.<sup>18</sup> Understanding some of the causes why the media is pushing a story can help us better understand the effects at the same time. All of this is to say the popular idea of, "government by publicity" is alive and well in the United States. This notion of, "government by publicity" means whichever side can capture more headlines and do a better job arguing their case within the media will be more successful in government because their message can be sold easier to the American public.<sup>19</sup> There is an even a pretty popular theory that because the media has no constitutional role in government they have evolved to act as another check against the judiciary. This check acts as way to monitor a judiciary which typically is left alone without any real oversight from Congress or the Executive branch, especially after confirmations to the Court.<sup>20</sup>

Another popular idea perpetuated by scholars in this field is that media is not just a bystander, but is an actor that can be an impediment to the policy process as well. In today's political world, politicians and nominees are forced to be literate in me-

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<sup>17</sup> RonNell Andersen Jones, "Media Politicization of the United States Supreme Court," *Oñati Socio-Legal Series* 4 (September 21, 2014): pp. 613-630

<sup>18</sup> Tyler Johnson and Erica Socker, "Actions, Factions, and Interactions: Newsworthy Influences on Supreme Court Coverage," *Social Science Quarterly* 93, no. 2 (2012): pp. 434-463

<sup>19</sup> Timothy E. Cook, *Governing With the News: The News Media as a Political Institution* (Chicago: Univ. of Chicago Press, 2010)

<sup>20</sup> William Rivers, *The Mass Media and Modern Society* (Harper & Row, 1971)

dia tactics. Before any real legislative action or judicial confirmation can be taken, the war has to be won in the media first so the electorate supports the measure.<sup>21</sup> This idea is applicable with Supreme Court nominees because although they do not possess a legislative portfolio their views and stances will undoubtedly have an effect on the policy process as a whole.

### **The Rise of Interest Groups**

Contemporary news outlets aside, the other major political actors come in the form of interest groups. Chances are the average American knows at least one powerful interest groups (think Planned Parenthood or the NRA). These groups pride themselves on influencing elections and nominations. These same groups tend to be incredibly successful at it. Ironically the Supreme Court ruled in *Buckley v. Valeo*, “individuals could make unlimited independent expenditures”<sup>22</sup> when referring to interest group spending during advocacy campaigns. The reason this is important is because, in terms of campaign finance, there is no longer a cap for issue advocacy and therefore interest groups can spend as much money as they like advocating for the confirmation of Supreme Court nominees. The result of this has been a dramatic influx of money and advertisements during the confirmation process drawing more attention and more political posturing to the Supreme Court.

In the case of the Supreme Court nomination process, as soon as a vacancy occurs dozens upon dozens of third-party interest groups lobby for their preference for the bench. The power these groups wield has exploded within the past 60 years and

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<sup>21</sup> Michael Gurevitch, Stephen Coleman, and Jay G. Blumler, "Political Communication—Old and New Media Relationships," *The Annals of the American Academy of Political and Social Science* 625 (2009): pp. 164-181)

<sup>22</sup> David B. Magleby, *Financing the 2012 Election* (Brookings Institution Press, 2014)

the nomination process will never be able to divorce itself from issue advocacy groups.<sup>23</sup> The process by which these organizations get involved is quite simple actually. Should a senator, who is particularly vulnerable or up for re-election, refuse to vote for the president's nominee they will be targeted through print, digital, and televised ads in addition to grass-roots advocacy. Large interest groups spend millions of dollars per state when fighting these judicial battles and will work tirelessly to ensure a particular outcome or ensure an opposing senator is voted out of office come Election Day.<sup>24</sup> On the flip side of the same coin, pressure from advocacy groups are designed to legitimize their own authority within a political party. When another vacancy inevitably occurs interest groups want to be seen the country over as a force to be reckoned with in order for senators and presidents to take their agendas seriously.<sup>25</sup>

Actions like these help shape presidential popularity and approval which then is translated into a partisan advantage for Supreme Court nominees.<sup>26</sup> The reason presidents take such aggressive action whipping support and enacting a media plan is because the president's message will be put to the test before the Senate Judiciary Committee and the media present. Even though the president's popularity is an important driver of the confirmation process the true idea at stake is the presidential legacy. President's go to war for their nominees because it is what will be written about them in

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<sup>23</sup> Lee Epstein and Jeffrey Allan Segal, *Advice and Consent: The Politics of Judicial Appointments* (Oxford: Oxford University Press, 2005)

<sup>24</sup> Richard Davis, *Electing Justice: Fixing the Supreme Court Nomination Process* (New York: Oxford University Press, 2005)

<sup>25</sup> Richard A. Smith, "Interest Group Influence in the U. S. Congress," *Legislative Studies Quarterly* 20, no. 1 (1995): pp. 89-139)

<sup>26</sup> Michael Giles, Bethany Blackstone, and Richard Vining, "The Supreme Court in American Democracy: Unraveling the Linkages between Public Opinion and Judicial Decision-making," *The Journal of Politics* (April 2008): pp. 3-39)



history books for years to come and is a shining moment for how they will be perceived throughout time.<sup>27</sup> Delivering a victory on the Supreme Court is an achievement that increases popularity within national political committees and with voters. All of these factors can aid a president's re-election and legislative goals.

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<sup>27</sup> Anthony J. Madonna, James E. Monogan, and Richard L. Vining, "Confirmation Wars, Legislative Time, and Collateral Damage: The Impact of Supreme Court Nominations on Presidential Success in the U.S. Senate," *Political Research Quarterly* 69, no. 4 (2016): pp. 746-759)

## **Chapter 1: Media on the Screen**

### **Introduction**

This first of three chapters will describe the rise of television, television's universality within America, and the psychological and partisan affects associated with this form of media. Accompanied by dozens pieces of research, this chapter will describe the role television has within the Supreme Court confirmation process. First, the chapter will describe the rise and cultural significance of television and its progression into the halls of Congress. After examining the ripples this act caused, the focus of this chapter will show how the behaviors of both the subject and viewer are altered through repeated use of the televised medium. Psychological and political science studies on television usage, imagery, dialogue, and sound will be relied on in this section to depict the tangible, observable affects television has on consumers. These affects are then applied to the research concerning the Supreme Court confirmation process which inevitably shows TV's power over the American electorate. This chapter argues that through a combination of constant usage, biased programming, psychological phenomena, and universality television directly affects partisan divisions within this country during Supreme Court confirmations. To prove this argument this chapter examine recent Supreme Court confirmation attempts, historical factors associated with TV programming and the United States Senate such as voting tendencies, and contemporary examples of biased television programming.

### **The Evolution of Television**

A massive proliferation of television ownership within American homes began around 1950 where only 9% of American homes had a TV. In the span of 10 years the

ownership rate jumped 80% to where 88.8% of Americans owned a television. During that decade experts estimate 44,000,000 TVs were sold in the United States.<sup>28</sup> Quickly, television became this nation's most popular medium for entertainment and news. The ability to consume relevant bits of information with little effort on the part of the viewer was enticing. Sound, picture, and later in the development of TV, color all became wildly appealing to the vast majority of Americans. Fast forward to modern day and TV still dominates American's time. According to the Bureau of Labor Statistics in 2018, 80% of Americans watch television every day of the week. Furthermore, American viewers from age 15 and up consume nearly 3 hours of TV on a daily basis. The Bureau also states these 2018 statistics are among the highest numbers ever recorded.<sup>29</sup>

It is fair to say watching TV is a staple of daily American life. These statistics are objectively alarming because such a large portion of the average American's life is spent sitting at home fixated on the television. However, for the sake of this research the general public's fascination with television programming is significant. The federal government has declared Americans are spending exorbitant amounts of time in front of television sets. This activity only proliferates the power of television especially when it is intertwined with our political apparatus. Politics has always been about partisan conflict in order to achieve a legislative goal or retain governmental power. However, this political reality was only exacerbated by the ability to broadcast partisan exchanges via television particularly with regards to the Senate Judiciary Committee during its hallowed role in the Supreme Court confirmation process.

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<sup>28</sup> Lynn Spigel, *Make Room for TV: Television and the Family Ideal in Postwar America* (Chicago: Univ. of Chicago Press, 2010)

<sup>29</sup> Rachel Krantz-Kent, "Television, capturing America's attention at prime time and beyond," *Beyond the Numbers: Special Studies and Research* 7, no. 14 (U.S. Bureau of Labor Statistics, September 2018)

## Political Behavior

There is a widely accepted scientific phenomenon in the world of physics known as the Observer Theory. Essentially what this principle states is that any situation, in this case the movement and predictability of sub-atomic particles, inherently alters the outcome. Purely by observing something means we have altered its destiny.<sup>30</sup> This theory has been extrapolated to all aspects of life, including politics. When extrapolated to include the business of professional politics the theory is quite simple to understand; when the cameras are on, politicians act differently than they do behind closed doors. This idea should not truly shock anyone. Politicians are perpetually public figures. The longevity of their careers are uniquely tied to their likability and public persona. Therefore, if the public image of a Member of Congress is weak so too are their chances of being re-elected. In a world dominated by instant news and constant contact from anyone and anywhere, what happens in public, to paraphrase from the Miranda Rights, can and will be used against you in the court of public opinion. Today's political commentators use phrases like, "media circus" and "public grandstanding" when referring to political actions that seem to be superficial and are only done to satisfy the electorate. These actions feed voters, who are truly addicted to journalistic and political carnage, what they want to see from their elected officials. How elected officials get votes is by never wavering when it comes to the platform that put them in office. Now the more media attention an event gets the more political it becomes. This phenomenon can arguably be best witnessed when the President of the United States attempts to fill a vacancy on the United States Supreme Court. One major contention

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<sup>30</sup> Bruce Rosenblum and Fred Kuttner, "The Observer in the Quantum Experiment," *Foundations of Physics* 32, no. 8 (August 2002): pp.1273-1293)

addressed in this thesis is the idea that since the U.S. Senate began allowing television cameras into the Senate Judiciary Committee hearing room the confirmation process for Supreme Court nominees has become rather Darwinian, not just partisan.

The Senate Judiciary Committee itself originated in 1789 when a group of 8 senators were chosen to create our nonexistent judicial system. What began as a select committee eventually was made permanent by a Senate resolution in 1816 thereby ensuring its importance for the years to come.<sup>31</sup> The original purview of the Senate Judiciary Committee was to essentially build the federal judiciary from scratch and then, after its implementation, maintain oversight authority to ensure a check on this third branch of American government. Once the judicial branch was solidified the true role of the Judiciary Committee, especially in modern times, shifted towards engaging in oversight activities associated with the Department of Justice and to “advice and consent” to the president’s nominees for the federal judiciary. The Committee constantly holds hearings for the president’s nominees. In these hearings senators ask nominees any question they want to gain clarity about certain judicial ideologies nominees may hold. These hearings are supposed to be an opportunity for senators to find out whether or not they will end up voting for or against a certain judicial confirmations.

The issue we need to focus on is determining whether or not contemporary hearings still behave in this fashion. Over 100 years after the Judiciary Committee’s inception the first televised Senate hearing was allowed in 1947. The intent was to make government more transparent as well as more inclusive for those Americans who could not witness these events first-hand.<sup>32</sup> Since the introduction of TV cameras back in the

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<sup>31</sup> “Committee History,” United States Senate Committee on the Judiciary, (2020)

<sup>32</sup> “Committee History,” United States Senate Committee on the Judiciary, (2020)

40s, politics in the Senate has been forever altered. Over time this medium has been corrupted and weaponized to serve political goals. In Michael Gerhardt's book *The Federal Appointments Process: A Constitutional and Historical Analysis* he discusses that while the introduction of media, particularly TV, was an important first step in growing political participation in this country the modern day results of these acts created a different beast altogether. Gerhardt describes how the federal appointment process has been irreversibly affected by media participation. He writes:

In the twentieth century, the development of new media outlets, including radio, network television, cable, and the Internet, has expanded news coverage about federal appointments and helped to subject the political process generally and the appointments process in particular to public scrutiny. The increased coverage of the appointments process has had several consequences. First, it has raised the stakes for nominees and the other political actors involved in the process by making it much harder to downplay missteps...Moreover, increased media coverage has probably facilitated mobilization for or against nominations by disseminating information useful to supporters or opponents...<sup>33</sup>

This direct access within the confirmation process has indeed caused several partisan responses as Gerhardt writes. His research suggests that in our current confirmation system media is not only used to display the political process, but it also is guilty of increasing the political importance of the confirmation process as a whole.

This statement on the higher stakes for political actors is quite interesting. Particularly because in politics the stakes are raised only if certain situations can either dramatically hurt or help the overall image of a politician. The image, or likability, of a politician is their currency which allows or prevents them from taking more visible, of-

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<sup>33</sup> Michael J. Gerhardt, *The Federal Appointments Process: A Constitutional and Historical Analysis* (Durham: Duke University Press, 2003), p.72)

ten times more controversial, stances on policy issues. This image can be improved by acquiring what scholars call a national prominence. The idea is simple. The more national recognition an elected official, particularly a senator, receives the more likely they are to be recognized back home. If a member of Congress is getting noticed around the country the perception is they are important and a formidable politician. In an article titled, "Washington Behavior and Home-State Reputation: The Impact of National Prominence on Senators' Images" renowned scholar Barbara Sinclair accurately describes how this image-centric mentality has taken hold of many elected officials and the effects of living and working within this culture:

National prominence does influence how well-known and how well-liked a senator is in the home state. National media exposure increases a senator's visibility at home. Institutional leadership positions, a presidential candidacy, and legislative activism do not directly affect visibility. To the extent these characteristics increase a senator's visibility, they do so through their effect on media exposure. Thus party leaders, senior senators, senators who have run for president, and legislative activists - but not committee chairs or ranking minority members per se - do receive more national media coverage than their colleagues, and this coverage does translate into greater visibility<sup>34</sup>

Supreme Court confirmation battles are inherently political and captivate media attention, therefore presenting a potential situation for increased visibility for senators. Many would agree the most important and documented duty of the United States Senate is their role in the confirmation process when it comes to federal appointments to the Cabinet and the federal judiciary. Therefore these hearings make for the perfect oppor-

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<sup>34</sup> Barbara Sinclair, "Washington Behavior and Home-State Reputation: The Impact of National Prominence on Senators' Images," *Legislative Studies Quarterly* 15, no. 4 (1990): pp. 475-494)

tunity to cause a scene, embarrass a witness, and most importantly feed your base with what they want to hear.

By increasing an event's visibility and importance in the political arena we are simultaneously increasing the partisan response that will follow. As we saw in both Gerhardt and Sinclair's work, senators are more likely to seek out national prominence through large-scale media events like Senate confirmation hearings. Then, once they engage in these events, senators will use them as a way to remain relevant in the minds of voters through trumped up rhetoric. The catalyst for all this division is the camera. Television preparedness and savvy coupled with the insatiable need for politicians to seek a larger public profile, in order to ensure their political futures, is why this absurd amount of hyper-partisanship exists within the confirmation process for Supreme Court nominees. Television cameras within the committee room does nothing but force politicians into their ideological trenches in order to do battle on the national stage.

### **Television's Effect on the Brain Politically**

Renowned author and philosopher Terence McKenna once famously said, "Television is by nature the dominator drug par excellence. Control of content, uniformity of content, repeatability of content make it inevitably a tool of coercion, brainwashing, and manipulation."<sup>35</sup> This position is not inherently controversial. The truth is a ubiquitous form of entertainment and source of information, which simultaneously keeps viewers occupied and stationary for long periods of time, has an unrelenting effect on the way consumers think. According to a recent study reported on by the New York

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<sup>35</sup> Terence McKenna, *Food of the Gods: The Search for the Original Tree of Knowledge : A Radical History of Plants, Drugs, and Human Evolution* (Tantor Publishing, 2012)



Times, Americans watch television so frequently that it totals close to watching TV for 77 days out of the year.<sup>36</sup> Looking at this statistic objectively, the thought of watching television for 77 days out of the year sounds rather absurd. However there have been dozens of studies conducted showing the huge dependence humans have to television and also how this dependence changes the way we think and behave. One such study completed by the American Association for Public Opinion Research articulates this idea. The report finds:

The results indicated that mere repeated exposure to a persuasive message was sufficient to enhance the subjects' attitudes toward that message...In the present study, it seems reasonable that, while reactance might lower evaluative ratings for those subjects who were previously neutral, those subjects who initially held slightly positive attitudes toward the persuasive message might with sufficient prodding, i.e., overexposure, commit themselves to act upon their attitudes.<sup>37</sup>

This study is one of many that expounds upon the well-founded theory in social science known as the mere-exposure effect. This theory essentially states we subconsciously begin to favor subjects we have been repeatedly exposed to. This preference is affirmed through continued visual and audio repetition, most often on television. This is essentially the whole business model behind the corporate and political advertising markets.<sup>38</sup> The theory is not limited to corporate product advertising. Since this theory is linked to television consumption the theory of mere-exposure applies to politics as

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<sup>36</sup> John Koblin, "How Much Do We Love TV? Let Us Count the Ways," *The New York Times*, (June 30, 2016)

<sup>37</sup> Richard L. Miller, "Mere Exposure, Psychological Reactance and Attitude Change," *The Public Opinion Quarterly* 40, no. 2 (1976): pp. 229-233)

<sup>38</sup> R.B. Zajonc, "Mere Exposure: A Gateway to the Subliminal," *Current Directions in Psychological Science* 10, no. 6 (December 2001): pp. 224-228)

well. Politics is sales and the confirmation process for Supreme Court Justices is won by advertising a product. In our case, political committees and interest groups are advertising an ideology in the same way businesses broadcast products. The only difference is when Americans want to support political “products” they respond with votes and grass-roots advocacy.

Comparing television coverage of Supreme Court nominations to advertising is more accurate than one might think. Today the Court receives a substantial amount of television coverage, more than ever before. As a result, the American public is constantly exposed to the rulings, actions, and finally the confirmation process of the Court. In *The Supreme Court*, a research text written by author Lawrence Baum, he describes how the Court receives more attention because it has become much more attractive in American culture. Baum prefaces this quote by discussing how before television and the age of instant information Supreme Court nominees were relative unknowns. However, since the decisions, speeches, everyday life, and most importantly the nomination process of Supreme Court Justices are now broadcast all over the country their seats and ideologies have become increasingly more important in American politics. Baum writes:

Major decisions and appointments of justices have received considerable attention...But in some ways, the relationship between the Court and the outside world has intensified. Interest in the Court has grown, in part because of the development of new media that provide more information about its work and about the justices. Public activity by justices outside the Court has probably increased, and some justices have become active outside the Court in ways that were less common in past eras. Together, these developments have intensified what legal scholars call “celebrity justice”. Expressing the same idea, other legal scholars said that “we live in a world now where all the Supreme Court justices are rock

stars.” Fascination with the Court and its members today is quite evident...

News media devote considerable attention to the Court.<sup>39</sup>

Baum is stating Justices of the Supreme Court have evolved into becoming some of the most visible members of our government. As a result, both the political and public realms have become entranced with the idea of putting someone on the Court who shares their same values and lifestyle. Before the proliferation of TV there was no real face time for these government officials and no real way for the public to be engaged in the political and cultural activity associated with filling a seat on the Supreme Court. However, now that Americans can easily engage in this attractive process means the outcome is more important. As news channels saturate their programming with every moment associated with confirmation the process, as a whole, becomes more competitive.

A contemporary example would be Justice Ruth Bader Ginsburg and her presence on the Court. Justice Ginsburg is a liberal icon on the Court and has recently become a cultural figure as well. Supporters in Hollywood have made both a feature film and documentary about the life and accomplishments of Justice Ginsburg within the past few years. Now imagine what would happen when a cultural icon, or “celebrity justice”, like Ginsburg resigns or passes away leaving a vacancy on the Court. The outcry would be enormous. Sympathizers will demand the president fill her seat with someone as liberal and as charismatic as Justice Ginsburg. Thus, the stakes for the entire nomination process will once again be elevated in large part because of Justice Ginsburg’s overall appeal and celebrity. For now this is just a hypothetical scenario, but inevitably vacancies on the Supreme Court will happen. When these vacancies occur,

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<sup>39</sup> Lawrence Baum, *The Supreme Court* (Thousand Oaks, CA: CQ Press, 2018), p.18)

partisan outcry will follow because the decisions, lives, and overall conduct of justices are constantly being displayed on TV and consumed by the American public. As opposed to the way we treated justices in the past, today's interest groups and politicians prop up justices of the Court as either ideological icons or as the embodiments of ideological opposition thereby making the process more politically contentious.

Television cameras are the culprits when investigating hyper-partisanship and the media personalities of elected officials. There is a substantial difference in reception when comparing television with other forms of media. Scholar Robi Chakravorti writes extensively on this idea of television's powerful influence on the American electorate. Specifically, Chakravorti states:

In print media, one reads the speech of a political leader accompanied by some descriptive notes and pictures; on the radio one hears the voice of the speaker but on television one sees the person against a special background. The viewer's perceptions are likely to be influenced more by the visual image of the speaker than what the speaker is saying...In a democratic system, dominated by the visual media and behind-the-scene influence and power play, it can be made colourful, diversionary, even delusive. Speeches are generally written by ghost writers carefully tailored to reflect the mood of opinion polls; on TV, politicians rehearse speeches and appropriate television postures, complete with make-up and stylised hair. Teleprompters are often used to give the impression that the speaker has memorised the speech or is speaking impromptu. Recently, a critical commentator of American politics pointed out that most people do not have the time, intelligence or even interest to think through political issues after a careful reading of news reports and analyses. The majority 'think visually' and TV media and photo journalism are now major vehicles for influencing people and voters.<sup>40</sup>

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<sup>40</sup> Robi Chakravorti, "Politics as Show Business," *Economic and Political Weekly* 40, no. 4 (2005): pp. 278-279)

In our case, the powerful imagery, background, and visual stimulus which captivates television audiences is the inside of the Senate Judiciary Committee hearing room. In the background during the confirmation hearings Senate aides scramble around passing relevant information to their bosses. Similarly we see the nominee sitting in front of these senators wielding nothing but pen and paper with their names displayed on a placard in front of them. Yet, behind the committee members on the wall hangs a large ornate seal of the United States Senate. Remember the main goal of these hearings is for politicians to display an image of power and importance in front of the American audience.

Herein lies the issue with politicized media events. The larger the spectacle, the higher the political stakes and therefore the bigger opportunity senators have to solidify electoral advantages. Referring back to Chakravorti's work a media event, like a confirmation hearing, is an opportunity to publicly advocate for or contest politically divisive issues that can stir up national debate. Since this research states TV is the premier way of persuading voters major televised events are therefore going to be used by politicians in order to do just that. At this moment it is important to take a step back and think about other highly televised political events. Picture campaign rallies, major protests, important interviews, and speeches made on the floor of the Senate and then think about what they all have in common. They are all televised and elected officials therefore use speeches and phrases to energize their base of voters and show some real conviction. It is all a ruse. The real important aspect of the Judiciary Committee's hearings is each senator gets their five minutes of uninterrupted glory in front of a bank of cameras before moving on to the next senator in line. With these five minutes sena-

tors recite dialogue which has been tested and revised to incite the most visceral responses from viewers across America.

Very rarely are these confirmation hearings anything more than free air time for senators attempting to make a political scene to appear resolute in their beliefs. Harry Jones, the Editor-in-Charge of the American Bar Association Journal, writes, "The members of the committee are likely to take sharp issue with the witness on general policy grounds, but it is only rarely that the witness is subjected to really searching examination on the factual grounds supporting his conclusions."<sup>41</sup> This quote helps describe one of the root causes of partisanship within the Senate confirmation hearings. Jones surmises the witness, or nominee, is scrutinized for political reasons rather than for practical ones. The hearing is more of an attempt to trap and embarrass a nominee than it is a search for answers. What makes the confirmation hearing so partisan is the television has allowed for senators to bloviate and become more extreme in their rhetoric and behavior because nothing will come of these hearings. These hearings have become more about flash and less about substance. Instead of the hearings turning up information relevant to the confirmation process itself senators use it as an opportunity to score cheap political points in front of an audience of millions of American voters. Also, as was discussed earlier in this section, when the cameras are rolling and the stakes are raised elected officials will not waste the chance to win votes. Before the cameras were allowed into the Senate office buildings there was no need for all the grandstanding and campaigning on live TV. Rather, senators could comport themselves

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<sup>41</sup> Harry W. Jones, "Congressional Committee Hearings," *American Bar Association Journal* 35, no. 3 (1949): pp. 220-221)

in a manner that did not require partisan fighting or dramatic exchanges in order to grab headlines.

### **Specific Case Studies**

Throughout the history of the Supreme Court there are multiple instances of failed confirmations and partisan challenges which pushed the entire process towards partisan extremes. Many scholars would point to the failed confirmation of Judge Robert Bork as the pinnacle of Senate partisanship. Others will point to the most recent, and barely successful, confirmations of Justices Kavanaugh and Gorsuch, along with the rejected nomination of Judge Merrick Garland. For this discussion it is important to compare the most recent nominations with others from the past. Obviously not every nominee has been victorious in the pursuit of the Supreme Court. Throughout the history of the United States there have been 163 nominations to Supreme Court. Of those 163 nominations, beginning in 1789, only 12 have actually been rejected. Now, we also must take into account those nominees who refused the bench, which was common in the early days of our country. Nominees were withdrawn, votes were postponed, and some judges never received a hearing in the first place. This leaves us with 119 successful confirmation votes that resulted in nominees becoming Supreme Court Justices. These numbers translate into a 73% confirmation rate and a 7% rejection rate (the other 20% come from withdrawal, postponement, and refusal rates).<sup>42</sup>

Understanding the history of our nation's confirmation votes is important because it allows us to then compare the past with the present. The whole purpose of this thesis is to show media, in this case television, has warped the confirmation

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<sup>42</sup> "Nominations," United States Senate Committee on the Judiciary, (2020)

process for the Supreme Court into an event which has become more partisan than we may have originally thought. These numbers are also significant because they show a historical pattern that Supreme Court confirmation process has not always been so combative. Rather nominees tend to get confirmed more often than not. These numbers show the results of the process as a whole and how civil and seemingly bipartisan the exercise has been since the Court began. However, to show how far we have come since the late 1700s all we have to do is look at the past three nominations as a true barometer of how television has divided our Supreme Court nomination process.

Judges Brett Kavanaugh and Neil Gorsuch were the two most recent nominations we witnessed which resulted in confirmation. The first example to explore however is Judge Merrick Garland who was nominated in the last year of President Obama's second term in the White House. Judge Garland was never granted a hearing and was only received by Democratic Senators along with a bank of TV cameras in order to make political noise out of Republicans blocking Garland's confirmation. Since Republicans had a majority in the Senate the Majority Leader Mitch McConnell had control of this entire process in the Senate. With this majority Mitch McConnell prevented the Senate from voting on President Obama's last Supreme Court nominee. By all indicators Judge Garland was a moderate who leaned left on a few issues. According to research conducted by the University of Chicago Law School Judge Garland would most likely have defended the center of the Court's overall ideology. By all indications he would not have been a liberal icon like Justice Ginsburg for example.<sup>43</sup>

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<sup>43</sup> Adam Bonica, Adam Chilton, Jacob Goldin, Kyle Rozema, and Maya Sen, "The Political Ideologies of Law Clerks," *American Law and Economics Review* 19, no. 1 (2017): pp. 96-128)



President Obama nominated this man in the hopes his ideological centrism would be enough of a motivation for Senate Republicans to vote on his confirmation. Senate Republicans refused this request citing historical traditions which prevented presidents in the past from filling vacancies their last year in office. Regardless of whether or not Senate Republicans were justified in their procedural road block the fact is Judge Garland is only one of five judges since the creation of the Court to not engage in any part of the confirmation process in the Senate.<sup>44</sup> On the surface this statistic makes it hard to argue on the basis of historical precedent and appears to be political strong-arming. The point here is the Garland confirmation process was wildly contentious and engulfed all three branches of government. This was politics at the highest level, and when political division reaches this point the cameras follow. In *Media Events in a Global Age* authors Couldry, Hepp, and Krotz discuss how the more political an event, the more news outlets cover it on TV, and the cycle continues. Specifically in their book they write:

Political conflicts, campaigns, and those attention-grabbing occurrences that we call “news” have all been subjected to the logic of spectacle and tabloidization in the era of media sensationalism, infotainment, political scandal and contestation, [and] seemingly unending cultural war...[The] media spectacle thus includes those media events and rituals of consumption, entertainment, and competition like political campaigns that embody contemporary society’s basic values and serve to enculturate individuals into its way of life.<sup>45</sup>

These authors describe how highly confrontational political events, like a confirmation process, is sensationalized in our modern age. Televisions will display non-stop cover-

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<sup>44</sup> “Nominations,” United States Senate Committee on the Judiciary, (2020)

<sup>45</sup> Nick Couldry, Andreas Hepp, and Friedrich Krotz, *Media Events in a Global Age* (London: Routledge, Taylor & Francis Group, 2017)

age of a particular event in order to ramp up the excitement and overall chaos associated with our political system. The authors put the blame on large media conglomerates as a whole, but the fact remains these highly political and highly combative exercises receive unnecessarily high amounts of coverage. That being said, chaos makes for good TV. Therefore, camera crews continue to record every minute they can of a confirmation, especially one as contentious as Judge Garland's. The result is TV consumers are repeatedly subjected to this over-hyped information which then provokes a response. As goes the television camera crews so too does the bipartisanship. Senators cannot possibly seem bipartisan when the media is by itself raising the political ramifications for the entire nation.

Judge Garland was truly the opening salvo in the most recent, and most politically contentious, confirmation battles. After Garland's nomination was squashed and President Obama left office, the job of filling Justice Antonin Scalia's seat fell to the incoming President Donald Trump. Within his first month in office, the President nominated Judge Neil Gorsuch to fill the vacancy. In response to the blocking of Judge Garland, Senate Democrats planned on returning the favor with regards to Judge Gorsuch. Democrats took every measure afforded to them the delay, obstruct, and filibuster the nomination of Judge Gorsuch. Senate Democrats had the votes to do this as well despite being in the minority. Senate rules dictated that confirmation of a Supreme Court nominee required 60 votes of the whole chamber to overcome the filibuster. Republicans at the time only held a 2 seat majority with 52, 8 shy of a filibuster-proof majority.

In response, Majority Leader Mitch McConnell triggered the “nuclear option” established in 2013 under former Democratic Majority Leader Harry Reid.<sup>46</sup>

The “nuclear option” is a rule within the Senate which limits debate and essentially destroys the 60 vote threshold for Supreme Court confirmation votes. As a result Judge Gorsuch was confirmed to United States Supreme Court on a vote of 54-45. Gorsuch’s confirmation vote was the first time in the history of the United States Senate that the “nuclear option” had been used in conjunction with a Supreme Court nominee. The option had been enacted back in 2013 with a Democratic majority, but was only applicable to lower federal courts and judicial appointments. In the course of 13 months the Supreme Court confirmation process had experienced one rejected nominee and one nominee confirmed only by changing Senate precedent going back roughly 230 years.

What followed after both Judges Garland and Gorsuch was nothing compared to the confirmation process of Judge Brett Kavanaugh to fill the vacancy left by Justice Kennedy’s retirement. Judge Brett Kavanaugh from the DC Circuit Court of Appeals was nominated by President Trump early in 2018 to replace the relatively moderate Justice Anthony Kennedy on the Supreme Court. Kavanaugh was a divisive pick from the start because of his close ties to the Heritage Foundation and the fact the President Trump nominated a firebrand conservative to fill Justice Kennedy’s seat who was more aligned with a center-right judicial ideology. During his confirmation process sexual assault allegations surfaced against then-Judge Kavanaugh which potentially threatened to sink his nomination. In response to these allegations a massive invest-

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<sup>46</sup> Sarah Binder, Anthony Madonna, and Steven Smith, “Going Nuclear, Senate Style,” *American Political Science Association* 5, no. 4 (December 2007): pp. 729-740)

ment was made in television advertisements both defending and attacking Judge Kavanaugh's credentials and personal life in the hopes of swaying votes from senators whose political careers hung in the balance.

According to PolitiFact, during Justice Kavanaugh's confirmation process support and opposition ads totaled about \$15.8 million from the President's announcement to the final Senate vote.<sup>47</sup> Most all of this money went towards television spots in targeted media markets in states with vulnerable Senate seats such as Indiana, Florida, West Virginia, Montana, North Dakota, Maine, Alaska, and Missouri. With a constant barrage of partisan television ads flooding the airways what followed was a predictable tribalist response. Judge Kavanaugh was eventually confirmed by a vote of 50-48 much to the displeasure of many in the Senate gallery who were forcibly removed by Capitol Police for shouting during the final vote. Regardless of the process, the end result was that in the span of two and a half years the United States Senate refused to hear one nominee outright and barely confirmed two others under a new administration. Plus, these confirmations were only achieved by undoing Senate rules to eliminate the filibuster for Supreme Court nominees.

As we read the findings from the American Association for Public Opinion Research the study showed participants who had preexisting attitudes towards a certain issue were catalyzed by the constant consumption on TV. This "overexposure" yielded a favorable response to becoming active for a certain cause. This idea was true with Justice Kavanaugh as it is true every time a vacancy comes on the nation's highest court. While many Americans hold some preconceived ideas about who they want on

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<sup>47</sup> John Kruzel, "The Role of Dark Money in Kavanaugh Confirmation Fight," PolitiFact, (October 2018)

the bench, television acts as a prominent push to encourage organizing, donating, and applying political and social pressure towards U.S. Senators and influential figures. Therefore, television is a key component which stokes the partisan feelings within the American electorate during the confirmation process.

The AAPOR goes further in its report by claiming that after subjecting the electorate constantly with ads, campaign slogans, and other forms of campaign material the effect is the public are exposed to a point where they become familiarized with or without implicit political engagement. Essentially, even if one is not overtly political in nature the constant political exposure through television will begin to encourage and formulate positions within the electorate. The AAPOR writes, “The results of the present study indicate that exposure of a persuasive message (bumper sticker, billboard, etc.) should ideally be sufficient to familiarize the target population...”<sup>48</sup> By being reminded of what is at stake in these political fights voters are similarly reminded of their partisan identity. All of the general television activity which is stirred up because of the confirmation process is done so in the attempt to indoctrinate the American electorate with a particular viewpoint in order to win a political victory. With a medium as ubiquitous as TV there is really no place where voters can escape the barrage of ads advocating for or against confirmation prospects. The result is when we go through the confirmation process the next time, the stakes are raised further and the divide grows deeper. Plus, presidents traditionally nominate more partisan, loyal jurors to satisfy their devoutly loyal and demanding base of voters.

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<sup>48</sup> Richard L. Miller, "Mere Exposure, Psychological Reactance and Attitude Change," *The Public Opinion Quarterly* 40, no. 2 (1976): pp. 229-233)

The American Association for Public Opinion Research is not the only group that has done extensive research on this idea of over-exposure and its social effects. To help reaffirm the idea over-exposure leads to partisanship a study conducted at the University of Utah focused on television exposure and the ramifications of the televised messaging. The main goal of the study was to see whether or not education levels and attentiveness had an effect on retention levels as it related to television programming consumption. The thought behind this work was to essentially tackle the idea of social programming and whether or not the content being displayed on a TV screen would subconsciously affect our choices, including political choices. This study, in conjunction with the previous study done by the Association for Public Opinion Research, is helpful when forming an opinion of how television is implicated in the hyper-partisan cultural we have. Specifically this study says:

In the long run, television [entertainment and news] programming may be an even more crucial socializing agent...most entertainment programs entail other attributes which may increase their salience. First, although they do carry critical sociopolitical messages to the audience, the viewer, who tunes in because of boredom or the need to be entertained, is even less on guard against these messages than when he or she is viewing television news...<sup>49</sup>

What this conclusion represents is while viewers may have the TV on simply to pass time they are still being indoctrinated to certain messages regardless of whether or not they are paying full attention. This study from the University of Utah in fact suggests TV in many ways is behaving in a subtle, arguably nefarious, way to inculcate a certain message or product within the consumer's subconscious.

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<sup>49</sup> Thomas J. Volgy and John E. Schwarz, "On Television Viewing and Citizens' Political Attitudes, Activity and Knowledge: Another Look at the Impact of Media on Politics," *The Western Political Quarterly* 33, no. 2 (1980): pp.153-166)

This indoctrination is achieved regardless of the level of attention being given at the time of the ad. Television, lest we forget, is not just the images, but is also composed of sounds and dialogue. The reason television is such an effective medium for persuasion is because it captivates the audience with stirring audio, enticing video, and stimulating visuals. Television ads work in similar ways to Las Vegas slot machines by accessing parts of the brain associated with pleasure and intrigue in order to retain customers.<sup>50</sup> This subconscious stimulus encourages television viewers to remain fixated on their screens because of the pleasure we receive. The longer time viewers are exposed to these persuasive campaign advertisements, the more likely they are to alter or exacerbate their political activity.

After taking a closer look at the previous confirmation votes another interesting fact stands out. First, we have to separate the votes into two different groups. The first group is every confirmation vote before 1947, when the Senate did not allow camera access, and the second group is composed of every vote after 1947. Then we need to isolate the voice votes conducted before and after 1947. A quick observation necessary for a better understanding of this exercise is it has been 72 years since 1947. Going even further, from the inception of the Court in 1789 to 1947 is 158 years. This is important because there was essentially double the amount of time in the former period than in the latter. Now, the reason this is important stems from the number of voice votes recorded in the Senate for Supreme Court confirmation votes. Before 1947 exactly 61 voice votes were held, all of which led to a successful confirmation. After

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<sup>50</sup> Mike Dixon, Kevin Harrigan, Diane Santesso, Candice Graydon, and Karen Collins, "The Impact of Sound in Modern Multiline Video Slot Machine Play," *Journal of Gambling Studies* 30, no. 4 (2014): pp. 913-929)

1947, the total number of voice votes drops to just 6.<sup>51</sup> The significance of this may not be immediately clear. Voice votes in the Senate are not-recorded votes and decided by whichever side has the loudest Yea or Nay votes cast by senators shouting their votes to the President of the Senate. The louder side presumably has more senators voicing support. The President of the Senate then makes a determination as to which side had more votes based on the observable volume of each side. These votes are gestures of good faith and bipartisanship between Republicans and Democrats.

Arguably, one major reason the number of voice votes in the Senate plummeted after 1947 was because senators were now on tape voicing their approval or disapproval for a judicial nominee. Since the television cameras were allowed into the Senate gallery, senators could no longer have crucial votes on the Senate floor decided in relative secrecy. The television cameras connected senators to their constituencies back home essentially discouraging bipartisan cooperation. Further investigation on this subject led me to Kenneth Shepsle's famous article, "The Changing Textbook Congress" where he describes the history and impact of these previously secret votes seen in the halls of Congress. Shepsle argues since the inception of both houses of Congress there existed irregular voting methods which encouraged expediency on legislative matters, but more importantly ensured anonymity on behalf of our nation's elected officials. In the Senate this practice was known as secret voting or the voice vote. With this mechanism legislation could be decided upon, both in committee and as a whole body, without senators having to formally cast votes which are immortalized on the record. Shepsle claims the progression to voting on the floor resulted from indi-

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<sup>51</sup> "Nominations," United States Senate Committee on the Judiciary, (2020)



vidual committees losing their power to guide legislation or unilaterally vet confirmations. As a result, votes of the whole chamber became large, televised public spectacles with recorded votes. These recorded votes were important politically because it provided primary challengers and partisan opponents with historical evidence to support claims made against incumbent senators.<sup>52</sup>

The idea of transparency is usually not the top priority within higher levels of government, especially in the Senate. Calling for accountability from our elected officials is therefore a noble pursuit. However, this idea of transparency in the Senate did not just come from public pressure. Rather, elected officials wanted to appear to be partisan combatants when on display for the American public. This was done so in order to steal attention away from both the opposition party and any institutional boundaries. Thus, inevitable political fights migrated from behind closed doors and cloak-rooms to the televised floor of the Senate. This way elected officials could be seen fighting for their constituents and for their party's issues on any TV in America. This continued stage presence helped portray power and resolve onto the American electorate. Kenneth Shepsle once again tells of us of the motivation behind eliminating secret votes and the proliferation of floor activity by stating:

Committee power was also compromised by increased voting and amendment activity on the floor. The early 1970s marked the virtual end to anonymous floor votes... This changed as it became increasingly easy to demand a public roll call, a demand greatly facilitated by the advent of electronic voting in 1973.<sup>53</sup>

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<sup>52</sup> Kenneth Shepsle, *Can Government Govern?* (Washington: Brookings Institute, 2010), p.363)

<sup>53</sup> Kenneth Shepsle, *Can Government Govern?* (Washington: Brookings Institute, 2010), p.363)

This idea ties into our earlier discussion of political grandstanding and how our elected officials take on a media persona in order to secure electoral advantages. The virtual elimination of secret or floor votes is another facet of this argument. It is no coincidence once television cameras were brought into the Senate expediency was cast aside for the daily campaign displays on the floor and in hearing rooms.

This is why voice votes were cast aside for the more public displays of partisanship. By forcing senators to stare into a camera and put their name on a recorded vote forces these individuals to stand firmly with their partisan positions because anyone can see or relive their votes with ease. Especially in the times we live in now all one has to do is search an official's name on the Internet and thousands of clips, soundbites, interviews, votes, and speeches are at the user's fingertips. Not to mention clips of floor speeches and votes are frequently used on news programming to inform viewers on congressional activity. Historically, the voice vote and secret vote was a way to avoid partisan attacks and the demagoguery associated with federal politics. However, once the everyday actions of senators started being broadcast on every television in the country their demeanor began to change as well. This is behavioral change is visible in senator's speeches, questions asked in committee, and in their votes and rhetoric concerning nominees to the Supreme Court.

The analysis then points to the fact that television programming, as well as targeted political advertisements, is responsible for both the political activation on preexisting political beliefs as well as partisan indoctrination through deceptive messaging. These two studies emphatically show through the television medium consumers are easily susceptible to partisan persuasion. This is incredibly important because of the

goal of politics. Political campaigns, and television advertisements specifically, are supposed to persuade and activate voters into supporting a candidate, party, or judicial nominee. Due to the awesome impact television has within American society it is apparent TV plays a role in furthering the political division we see every time a seat opens up on the bench. The deceptive psychological and emotional nature of television is quite powerful. These characteristics are undoubtedly contributing factors to the increase of tribalism in politics. Television is a crucial mechanism used by both sides of the political spectrum that acts as a catalyst for partisan sentiment during confirmations. This result is achieved through divisive, but subtle messaging flooding television sets across America. While the consumers may not be fully aware, political information is constantly being received and subconsciously stored for future use.

There is a famous saying in media which states, “If it bleeds it leads”. The phrase is a rather sadistic explanation for behavior and decision-making associated with how certain news is covered by media entities. Basically if there is a particularly vicious conflict large news organizations will lead with that story at the top of every hour. The idea is this kind of chaos is good for ratings because more viewers tune in to watch these darker images than they normally would for average programming.<sup>54</sup> These sorts of news stories elevate the heart rate and captivate audiences with news not seen frequently. Now, there does not necessarily have to be blood in the streets in order for viewers to flock to their TV sets to watch the news. However, the issue becomes there are many different programs and channels who provide 24-hour news

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<sup>54</sup> James T. Hamilton, *Channeling Violence: The Economic Market for Violent Television Programming* (Princeton: Princeton University Press, 2000), p.239)

coverage. This means senators must constantly “feed the beast” in order to get media attention across all programming in the hopes of furthering their political goals.

Returning to Gerhardt’s work from a moment ago, Gerhardt discusses how elected officials involved with the confirmation process have to compete against other senators, both friends and foe, in order to get any coverage. Gerhardt writes:

The competition for news (and for viewers or listeners, particularly in an age with so many news outlets and limited attention spans) has produced a voracious appetite within the media for conflict, scandal, and speculation or commentary (rather than just the simple reporting of verified information)...Thus the expansion of information technologies has helped...to create a complex set of internal and external pressures the presidents, senators, and others routinely involved in the federal appointments process must cultivate or master to achieve their desired outcome.<sup>55</sup>

The idea of heightened conflict and intensified rhetoric in favor of a certain policy goal is another way to define hyper-partisanship. The worst part about this conflict and competition is all the television cameras recording every moment of it. The reason why nearly every large media outlet has a camera in committee hearing rooms is because confirmation hearings are forms of political combat. An added bonus is this combat occurs between some of the most famous political figures in the country. The media loves this conflict because it makes for good television which makes for good ratings. To further this claim, the most recent confirmation of Justice Brett Kavanaugh was one of the more contentious and controversial in American history. The process was so controversial, politically divided, and culturally impactful that according to the Nielsen Media Research Center over 20 million viewers tuned in to see Kavanaugh’s second

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<sup>55</sup> Michael J. Gerhardt, *The Federal Appointments Process: A Constitutional and Historical Analysis* (Durham: Duke University Press, 2003), p.74)

testimony after the sexual assault allegations came out against him during his confirmation process. To give some perspective, the Super Bowl normally garners an audience of 100 million viewers. So, the Kavanaugh nomination hearing was 1/5 of the media viewership frenzy as the most watched television event in the United States.<sup>56</sup>

### **Consolidation and Partisanship**

Another crucial aspect to examine is the role media consolidation has on American consumption of television. The Federal Communications Commission, a federal agency within the Executive branch of government, historically has been tasked with preserving fairness by preventing monopolized ownership over American media. The goal of numerous FCC policies is to promote balanced and fair representation of the news to the American public. Since 1987 many of these rules have been rolled back or rescinded altogether.<sup>57</sup> As a result large media conglomerates have spent years and billions of dollars consolidating local television stations and national broadcasting groups in order to increase profits and market-share. A byproduct of these lax FCC rules is a few corporate giants control massive amounts of the televised media which is consumed daily by the American public. This control gives these conglomerates the ability to control the American news narrative. In other words, these media groups control how the news is displayed and therefore can spin it to benefit or destroy any candidate, political party, or Supreme Court nominee they desire. Understanding who owns what percentage of television media is a more complex task than originally thought. Despite extensive research and analysis of the FCC's website and reports the specific ownership percentages were never fully revealed. Numerous scholars and

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<sup>56</sup> Nielsen. "Quarter By Numbers: Q3 2018," (November 2018)

<sup>57</sup> Brooks Boliek, "FCC Finally Kills off Fairness Doctrine," Politico, August 22, 2011.

government employees also have found it difficult to decipher exactly what percentage of a Designated Media Area (DMA) corporate entities own. The reason for this confusion is due to a complex cross-ownership network which media entities use to obfuscate their true ownership percentages.

After extensive research a book on the dangers of media conglomeration in America provided more incite on ownership levels. This book, titled *Culture Conglomerates: Consolidation in the Motion Picture and Television Industries*, describes the media landscape after another FCC easing of media ownership ruling in 2004. This ruling allowed the top six media companies in America to increase their percentages of local television ownership and national coverage penetration in households across this country. Across the 210 DMAs in this country six conglomerates (Paxson Communications, Viacom, Fox, Univision, Tribune Broadcasting, and NBC Universal) held an average of 45.77% total national television coverage and together owned 215 television stations across America.<sup>58</sup> To put this in perspective, the total national coverage percentage indicates each one of these six companies reached on average of 45.77% of households nationwide with their television programming. One company in particular, Paxson Communications, reached over 63% of households nationwide because of their station ownership.<sup>59</sup> This kind of consolidated power gives these companies unbridled power to broadcast their interpretations of current events directly to American voters. More recently, companies like Walt Disney Corporation, Comcast, CBS, and

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<sup>58</sup> William Kunz, *Culture Conglomerates: Consolidation in the Motion Picture and Television Industries* (Oxford: Rowman & Littlefield Publishers, 2007), p.88)

<sup>59</sup> William Kunz, *Culture Conglomerates: Consolidation in the Motion Picture and Television Industries* (Oxford: Rowman & Littlefield Publishers, 2007), p.87)

Time Warner have also been jostling for media dominance in America by buying or creating new programming, channels, and streaming services for television consumption.

At this point we need to understand how the process of media consolidation affects polarization during the Supreme Court confirmation battles. Any time there is a consolidation of information delivery, television stations lose their independence and objectivity. Without independence, these local stations and news networks become corporate entities and are beholden to corporate interests. Therefore, the television medium can now be weaponized to further political and financial interests. To make matters worse, if six conglomerates own most of the television stations in this country then a select few individuals get to determine what is broadcast to the American people on their TVs. This proliferation of local station ownership has been incredibly profitable for these conglomerates, especially during highly political time. In a paper published by the Paris School of Economics, scholar Antonela Andonia Miho describes how this consolidation gives media titans political power as well as financial advantages. She writes:

[P]olitical ad revenue is disproportionately allocated to swing states, where presidential races are closely contested. A Television Bureau of Advertising study estimated that in 2012, of the political ad money paid to local stations, 53% of all candidate spending and 81% of presidential ad spending went to nine swing states (Colorado, Florida, Iowa, Ohio, Pennsylvania, Nevada, North Carolina, New Hampshire, and Virginia). Accordingly, many broadcasters...explicitly changed strategies towards the acquisition of stations in these swing states... The consolidation of broadcast companies happening at the same time may have allowed them greater bargaining power over cable and satellite companies with which to negotiate higher fees.<sup>60</sup>

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<sup>60</sup> Antonela Miho, "Small screen, big echo? Estimating the political persuasion of local television news bias using Sinclair Broadcast Group as a natural experiment" *Hal Archives* (October 2018), p.8

The key take away from this research is media giants have the ability to set the price for political advertisements during big elections or times of high political activity like during a Supreme Court confirmation. During a partisan rush to reserve ad space on television programming these conglomerates jack up their costs, especially in states with vulnerable senators. The result is a small group of executives can determine the broadcasting content American viewers consume on a daily basis. This content can directly affect the outcome of multiple federal elections across the country. The current state of the television broadcasting apparatus is very concerning because it is positioned to be a political instrument to further the desires of big media.

To clarify, this issue is not exclusively left-leaning. Both sides of the political aisle are guilty of slanting their coverage towards a certain partisan ideology and targeted audience. One academic analysis of Justice Kavanaugh's confirmation indicated media flagships Fox News and CNN both covered the process with a partisan tilt. The analysis states:

In the other two outlets, however, balance and neutrality were largely replaced by straightforward negativity or positivity towards only one of the involved parties: Fox News was significantly more negative towards Christine Blasey Ford and her accusations, and supported Kavanaugh with positive valence. The CNN material displayed much more positive valence towards Blasey Ford and instead depicted Kavanaugh in a more negative light. Reading only one of these sources to inform oneself about the Kavanaugh case would thus lead to different and certainly limited formations of opinions. Consequently, at least with regards to the Kavanaugh case, the discrepancies in valence detected in Fox News and CNN indicate that the two outlets are prone to bias.<sup>61</sup>

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<sup>61</sup> Miriam Hinternes, "Same News, Different Stories Framing, Valence and Journalistic Quality in US News Reporting on the Brett Kavanaugh Allegations," (University of Twente, June 2019), p. 25)



This analysis essentially confirms the suspicions many Americans have with regard to these two programs. Both of these networks, who pass themselves off as unbiased journalistic programs, are guilty of playing politics during Supreme Court battles. This study is emblematic of the problem that resides within broadcast journalism. The problem being television media can, and often does, present political inclinations to viewers. They do so in order to push partisan messaging in the pursuit of a desired philosophical change to the federal government.

Overall the fact of the matter is partisanship lies at the heart of American television media. Ownership consolidation and implicit bias are two more examples of how the television medium has evolved into a partisan weapon used during highly polarized times such as Supreme Court confirmations. Control of information content and flow allows media conglomerates to present a certain narrative to the American electorate. What is further concerning is this process of consolidation is still going on. On October 25th, 2017 the FCC, chaired by Trump appointee Ajit Pai, announced the commission was further rolling back a 15-year ruling which limited local station consolidation. This ruling would dramatically benefit the Sinclair Broadcast Group, which is a conservative-leaning media company whose programming traditionally supports the President and his agenda.<sup>62</sup> In September of 2019 the United States Circuit Court of Appeals for the Third Circuit overturned this ruling in a 2-1 decision.<sup>63</sup> This rejection halted this FCC decision for the moment, but this battle is far from over. The point is this consolidation fight is not limited to one side or the other. Rather this fight is happening right now and

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<sup>62</sup> John McKinnon and Keach Hagey, "FCC to Ease Limits on Local Media Ownership," *The Wall Street Journal*, (October 25, 2017)

<sup>63</sup> *Prometheus Radio Project v. Federal Communication Commission*, (2019)

can have lasting effects on the future of American politics and the Supreme Court confirmation process as a whole.

## **Conclusion**

Despite all the research and scholarship presented it is important to also look at the main opposing arguments. There is an old saying which reads, “sunlight is the best disinfectant.” Traditionally, this phrase means nefarious activity occurring behind closed doors, whether in politics, business, or sport, is best combated by bringing these practices to light. By informing the public, demands for change would naturally follow. The practice is well-founded and also a tactic many in the media firmly believe in. So, if sunlight truly is the remedy in ousting undesired behavior why should we care about partisan attacks during the confirmation process? After all, if some partisanship prevents an unqualified or unwelcome judge from serving a lifetime term on the highest court in the land then why should we demonize this ritual? Truthfully, this is a pretty fair argument. Partisanship has brought out successful legislation, confirmations, and a better government in general for all Americans. This argument would be that we are no longer living in traditional partisan times. Some scholars would disagree.

Notably, renowned author Morris Fiorina wrote a book entitled *Unstable Majorities: Polarization, Party Sorting, and Political Stalemate* in which he argues that despite the rhetoric and sentiment of this nation may seem to be irreconcilable we are far our darkest days. Specifically he points to American’s voting tendencies and reactions to historical events which conjured even worse partisan responses like the Civil War, the Civil Rights Era, the beginning of the Iraq War, the Great Recession, and a few signifi-

cant American events.<sup>64</sup> His book is supposed to be a beacon of hope that these “dark days” we are experiencing now with partisan politics are not the most divisive times this country has faced. However author Samuel Huntington said it best saying, “Historical development involves pragmatic responses to the increasing scale and complexity of society and economy, and demands increasing interaction, both cooperative and competitive...”<sup>65</sup> Does this sound like modern day America? The competition aspect unquestionably sounds like the United States today, but cooperative interaction most certainly does not.

Politicians who disagree with each other engage in rhetorical brawls using terms like: racist, socialist, moronic, evil, sexist, xenophobic, and the list goes on and on. Let us turn our attention to college campuses for a moment as well. Universities are supposed to encourage and protect controversial thought and ideas. In fact universities have always been hubs in the fight for progress and new ways of life. Now they have become battlegrounds. Wearing a certain hat or having a minority opinion gets you shunned, scolded, and belittled, usually on video. Literal fist fights between differing ideological groups are not rare at all either. As a society we may disagree on public policy, economics, even culture but there is supposed to be an underlying civility within it all. Many feel this civility has vanished and when the dust settled from November 2016 we were all forced to hop into a partisan trench and get in the fight. Perhaps this is a pessimistic approach, but only time will truly tell.

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<sup>64</sup> Morris P. Fiorina, *Unstable Majorities: Polarization, Party Sorting, and Political Stalemate* (Stanford, CA: Hoover Institution Press, Stanford University, 2017)

<sup>65</sup> Samuel Huntington, *American Politics: The Promise of Disharmony* (Cambridge: Harvard University Press, 1983), p.225)

There is no denying the last three nominations this country has had resulted in a full on partisan assault from both sides. The Kavanaugh confirmation so was politically contentious four out of five Democratic Senators in swing states who voted against Judge Kavanaugh's confirmation were subsequently ousted from their positions in Congress (Claire McCaskill from Missouri, Heidi Heitkamp from North Dakota, Joe Donnelly from Indiana, and Bill Nelson from Florida). Plus, Republican Senator Dean Heller also lost his seat to a Democratic challenge largely due to the Kavanaugh vote. Voters made this confirmation so politically important Senate jobs were lost as a result. Admittedly these tense votes could also be the result of higher stakes associated with certain issues, but it is correlated to the role of television and the televised images of elected officials. There were no arguments made that our most recent two Supreme Court nominees were unqualified with respect to their resumes, but a media frenzy engulfed the whole process and acted as a significant confirmation hurdle. As mentioned before, confirmation hearings rarely fail and are overwhelming successful just by looking at the numbers. Those days are firmly behind us. The new reality is nominees have to fight their way to the bench through televised political warfare.

## **Chapter 2 : The Social Component of the Court**

### **Introduction**

The role of television is just one facet in the overall role of media in the proliferation of partisanship with regards to judicial nominations. We cannot blame all of the problems of partisan politics on television. During this current period of time in which the smartphone dominates social interaction, America's political fights have begun to shift away from the newspaper and television and towards the phone and computer screens. The result of this shift has been the rise of political content designed to target voters online and motivate them to support/oppose certain policies or candidates for office. The same is true for nominees to the Supreme Court of the United States.

In this chapter the role social media plays in our current political culture and how it affects the confirmation process for the Supreme Court will be examined. The contention is social media, similar to television, proliferates the partisanship seen on Capitol Hill when attempting to fill a vacancy on the Court. The topic will be researched extensively both with respect to politics and the psychological aspect of social media. It should come as no surprise social media has the ability to alter the way we think and interact with other users. Therefore, it is important to also investigate specific elections, confirmations, and other political events to show social media has a large role with contemporary Supreme Court confirmations then previously believed.

### **Origins of Social Media**

One of the most universal social media giants is Twitter. Since its inception in 2006, Twitter has appealed to the masses as a way for users to send and receive information instantaneously at their fingertips. The beauty of this platform is users are

interconnected therefore allowing tweets to be circulated across the world with one tap. Twitter's universality is not without problems however. The accessibility and rapid response of this social media platform provides a unique opportunity for mass engagement and messaging to all users. Naturally, partisan opinions have infected the site and led to Twitter being used as a way for politicians and parties to disseminate information at the click of a button to millions upon millions of users.

Facebook is no different. This Silicon Valley giant was the first major social media company and has been a cornerstone of online social media activity since its inception. From its creation in 2004 to now, Facebook has grown to cater to users all over the world. As of today, there are nearly two billion users of Facebook across the globe. With that many pairs of eyes constantly monitoring the site, Facebook's role in politics similarly exploded with profiles, ads, and news articles covering pages and feeds all over the website. Similar to Twitter, Facebook's draw is users can remain connected to one another despite geographical barriers. These "friend networks" allow for Facebook and Twitter users to remain engaged in what is happening with other users in their networks, and what they wish to share.

### **The Power of Social Media**

Social media platforms are immensely powerful tools which allow for the user to connect and share information instantaneously. Another beauty of social media is the ability to "follow" all kinds of people and remain updated on what they post. All of this information is accessible at our fingertips whenever we wish. Having access to a platform which broadcasts certain messaging across millions of users at a moment's notice, that is also free to use, is obviously incredibly appealing to politicians. When run-

ning for office the goal is to share a candidate's story and vision with as many voters as possible. This strategy is how a politician turns out votes. Electronic outreach to the electorate saves vast amounts of time and money which are often limited during campaigns. Some districts are quite expansive and contain thousands upon thousands of perspective voters. Regardless of how well a campaign is run, politicians cannot meet and talk with every voter in their districts. There are never enough hours in the day to achieve such a goal, no matter how big or small the district is. Enter social media. With the relative universality of platforms like Facebook and Twitter, politicians have the ability to reach out to more voters in their districts in order to build a national profile to gain support for their candidacy agendas. This is why many members of Congress are widely known outside of their districts and have millions of followers despite the fact U.S. House districts only contain around 750,000 people. Needless to say, social media platforms have become pillars of all political campaigns.

Scholars argue social media is becoming, or perhaps has already become, institutionalized with regards to contemporary American politics. In the book *Institutional Change in the Public Sphere* author Signe Bock Seggaard examines the public perception of social media and its role in politics. Seggaard surveyed voters and politicians on the local, state, and federal levels to see how social media was perceived by the public and what role social media plays during elections. The findings suggested the public already saw social media as an inherent facet of politics. The study concluded:

In line with this, the main conclusion is that we have strong indications that the institutionalization of social media as a political arena is in progress...Politicians act strategically according to their belief in the power of social media, while voters are more concerned about its practical aspects. The study indicates that this is even the case for local politicians in small and medium-sized municipalities.

Moreover, the fact that politicians – the stable supply side of political communication – are more interested in social media means that social media will be used in such a context. And the fact that a great portion of voters, especially the young, recognizes social media as an appropriate political channel indicates that there is an audience – a demand side – and that this audience may well get bigger in the future. All together, these findings call attention to a process of institutionalizing that is anchored in the central actors' perceptions of what is useful.<sup>66</sup>

The significance of this study is to show the respondents see social media as a pillar of political campaigns. This research is important because those surveyed felt social media is already an important aspect to politics. The people surveyed were voters and politicians alike so both sides of the political apparatus view social media as a key component of political campaigns. This research is important because it illuminates the current perception of social media. This study shows the prominence of these platforms within the political system which further enforces the idea social media can be accused of furthering political divisions. The more prominent social media becomes in politics, the more likely it is to be weaponized during crucial political moments, such as Supreme Court confirmations.

### **Psychological Effects of Social Media**

Since the introduction to social media in the early 2000's scientists have been studying the long-term psychological effects of the continued use of social media and how it alters the way users think and, in our case, how they vote or identify politically. One of the reasons social media's role in politics has increased dramatically is because of its universality and constancy. Users are being exposed to political messaging on every page or in every ad across all social media platforms. The advantage for political

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<sup>66</sup> Signe Bock Seggaard, *Institutional Change in the Public Sphere* (De Gruyter, 2017), p.135)



actors is while users may not be registering it fully, the prolonged immersion and repetition is slowly shaping how politicians want voters to think and eventually vote.

Scholars from the University of Indiana set out to investigate the relationship between communication of users who were not of the same political ideology. The idea was to study political communications in the weeks leading up to the 2010 midterm elections and monitor tens of thousands of tweets to see the result of cross-party online communications. The study, conducted by Conover, Ratkiewicz, Francisco, Goncalves, Flammini, and Menczer focused on the role of the “retweet” and the “twitter mention” as their two variables to track interactions among Twitter users. The result was most of these actions followed ideological divides and actually ramped up partisan interactions that are otherwise considered uncommon during in-person interactions.

The study states,

Whatever the case, political segregation, as manifested in the topology of the retweet network, persists in spite of substantial cross-ideological interaction. Qualitatively speaking, our experience with this body of data suggests that the content of political discourse on Twitter remains highly partisan. Many messages contain sentiments more extreme than you would expect to encounter in face-to-face interactions, and the content is frequently disparaging of the identities and views associated with users across the partisan divide.<sup>67</sup>

Essentially what this study found was while Twitter allows for unhindered communication, it does not mean the platform yields more open dialogue and understanding communication between users of opposing political ideologies. In fact this study suggests the opposite. It suggests political discourse is highly partisan online and users

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<sup>67</sup> Michael Conover, Jacob Ratkiewicz, Matthew Francisco, Bruno Goncalves, Filippo Menczer, and Alessandro Flammini, "Political Polarization on Twitter," *International AAAI Conference on Web and Social Media* (2011), p. 95)

engage in surprisingly extreme partisan rhetoric because it is not an in-person interaction. The fact the discourse is, “more extreme than you would expect to encounter in face-to-face interactions” is a perfect way to characterize the role Twitter has on Supreme Court nominations as well. This ability to challenge any nominee or judicial philosophy openly, according to this study, leads to swift political opposition by those on the other end of the political spectrum and vice versa.

In addition to the discourse being politicized on Twitter other studies suggest the social network one has also plays an important role in how users develop political ideologies. The discourse while online is a huge component of overall politicization. However, seeing as sites like Twitter are about social networks as a whole, the company one keeps online is equally as important to how political ideas are generally formed online. A study conducted by scholars Robert Lupton, Shane Singh, and Judd Thornton explores this aspect of how social media networks affect political attitudes and overall partisan behavior. Their findings suggest a user’s constant immersion in certain biased friend networks will eventually alter or solidify their views on issues or candidacies. The study states:

The results demonstrated that one's support for various values, consistent with several previous studies, influences their partisan identity. However, the magnitude of this relationship is dependent upon one's social network...The findings in this article offer strong support for the idea that one's partisanship has a social component to it and that it is not based solely on one's intrinsic characteristics. Moreover, the results suggest that the impact of political discussion on attitudes is considerable...There is considerable evidence that social networks specifically influence political attitudes and behavior.<sup>68</sup>

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<sup>68</sup> Robert Lupton et al., “The Moderating Impact of Social Networks on the Relationships Among Core Values, Partisanship, and Candidate Evaluations,” *Political Psychology* 36, no. 4 (2014): pp. 399–414)

The findings support the idea that the social network one has influences political decisions. This fact is important because social media is all about interconnection and user social networks. No where else in the world are we constantly subjected to the thoughts, political or otherwise, of those we are connected with. These political discussions have a considerable effect on how people approach politics. If we look at this objectively it makes sense that our online networks would affect our political beliefs. This study follows a common theme for this thesis in which constant exposure or immersion will change the political behaviors of voters. Twitter's business model is to create, and constantly expand, the social networks of their users. Therefore, Twitter's users are constantly being exposed to partisan dialogue which slowly alters their perception of politics.

So far we have discussed the polarizing effects of engaging in political discourse and the correlating effects of one's social network. Another pivotal aspect of social media and its affect on partisanship is the medium's usage of persuasive imagery. Similar to television, social media's universality has led companies and, in our case, politicians to utilize this platform to capture the attention of users who may just be scrolling through the news feeds. The difference between television and social media is the age of users. The vast majority of social media users are fall within the 18-34 year old range. According to Statista, 38% of all Twitter users fall within the 18-29 year age range.<sup>69</sup>

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<sup>69</sup> J. Clement, "Percentage of U.S. Adults Who Use Twitter as of February 2019, by Age Group," *Statista* (August 9, 2019)

On Facebook the numbers are even larger. According to the same website, 58% of Facebook users are between the ages of 18-34.<sup>70</sup> Why are these metrics significant? Firstly, the younger generation tends to be more impressionable when it comes to politics. Traditionally, younger voters have not had as many political or cultural experiences with government so their opinions are not as solidified as an older voter. Secondly, the youth of this country tends to not care as much about politics and therefore do not form individual political opinions. The result is social media plays a significant role in the political development and shaping of young minds. The research supporting this claim is authored by Professor Mary Hepburn. Her research at the University of Georgia supports these claims about youth participation and subjugation on social media. She writes:

There is adequate research to make us aware that the electronic media are now intricately involved in socialization from the early years. Political news and political imagery is immersed in vibrant, flashy ads, lively colorful animations, violent fearful crimes, shocking explosions, and hours of programming on various pop culture celebrities... There are signs that the Internet is also gradually assuming that kind of powerful role... For example, college freshmen express the lowest level of interest in politics in 30 years. Patterson (1987) finds that the American public, which is increasingly indifferent to politics, has fewer psychological defenses. Patterson said, 'Once we have an uncommitted and uninvolved electorate, we also have an electorate vulnerable to the media's image of politics.'...<sup>71</sup>

Hepburn's research on this matter only further illuminates the tremendous power social media has on the user. In this particular case, the user is enticed to engage with certain

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<sup>70</sup> J. Clement, "Distribution of Facebook Users Worldwide as of October 2019, by Age and Gender," *Statista* (November 20, 2019)

<sup>71</sup> Mary Hepburn, *E-Political Socialization, the Press and Politics: The Media and Government in the USA, Europe and China* (Peter Lang Publishing, 2014), p.325)

content because of the way it is presented online. Campaigns offer dramatic but aesthetically appealing advertisements for their candidates because of the attention it attracts from a coveted voting demographic. This research shows the efficacy of social media conditioning and reiterates the point about how social media can be weaponized against users through psychological conditioning.

An argument could be made that social media presence on either Twitter or Facebook does not necessarily mean its use is causing that large of an effect by a member of Congress. This is honestly a fair assumption. Just because there may be a particular Congressman or Congresswoman who tweets about political issues, like the Supreme Court confirmation process, does not necessarily mean this messaging works. What is important to note is the fact that members of Congress actually have a much larger online presence than originally thought. According to a study conducted by the Congressional Research Service, Twitter and Facebook are not the only platforms congressional Members utilize in their official and campaign operations. Rather, the study claims social media activity is much more widespread among our elected officials. The author of the study, Jacob Straus, writes:

...in the 114th Congress, a majority of Members had adopted six or more social media platforms. Since the median and mode are six platforms, those who have adopted more might be considered heavy social media users, whereas those who have adopted fewer might be considered light users. Using the quartile distribution of adopted platforms, a pattern of adoption can be observed: a light social media user has adopted between zero and four platforms, an average user has adopted between five and seven platforms, and a heavy adopter has signed up with eight or more services.<sup>72</sup>

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<sup>72</sup> Jacob Straus, "Social Media Adoption by Members of Congress: Trends and Congressional Considerations," *Congressional Research Service* (Library of Congress, October 9, 2018)

This revelation that members of Congress, on average, have a social media presence on six different social media platforms is an important study for our purposes. Having a presence of six platforms means certain messaging and information is displayed six times to six different audiences and consumers. This allows for a messaging proliferation across numerous mediums of social media. Similarly, members of Congress, especially members of the U.S. Senate, are the elected officials who are voting on the legislation or, in our case, confirmation of Supreme Court Justices. Broadcasting political stances on this many platforms inherently drives up partisan identity because this messaging is broadcasted to as many users online as possible. The more certain polarizing content is circulated the more views it receives and therefore the more opinions can be altered or solidified.

A key caveat we must remember in this debate is that no one is not unilaterally claiming social media usage is the single instigator of partisan gridlock. Nothing could be further from the truth. As mentioned last chapter, nearly 30 nominees to the Supreme Court have been voted down, withdrawn, received no vote, or the vote was postponed since the inception of the Court. All of these nominees, with the notable partisan exception of Judge Merrick Garland in 2016, were nominated before the proliferation of social media in our modern political culture. Having said that, the social activity of members of Congress act as an important indicator for the overall level of partisanship. Remember these members of Congress are the people who would eventually hold hearings, ask questions, and later vote to confirm or reject Supreme Court nominees. In fact this study researched the 114th Congress which was in session while Merrick Garland was attempting to get Senate hearings for his confirmation which was

quite contentious on Capitol Hill. Investigating the social media activity of members of Congress allows us to also see how expansive congressional social media use leads to further partisanship because these elected officials are the ones voting and justifying their stance to their constituents back home. The party agenda and talking points are widely disseminated for public consumption leading to debate and disagreement across the country.

### **2016 Presidential Election**

Facebook's recent role in the American political process has been mired in controversy and scandal. Throughout the 2015 Brexit and, then candidate, Trump campaigns, both organizations used a digital marketing vendor named Cambridge Analytica to run campaign advertisements specifically on Facebook. In recent months Cambridge Analytica came under fire for how they carried out their advertising strategy on Facebook. After a whistleblower came forward with sensitive information about how Cambridge Analytica operates the company was thoroughly investigated for illegality and potential voter manipulation in national elections in the United States and the United Kingdom. The worst part about these intrusive acts was the Facebook platform allowed for Cambridge Analytica to micro-target voters in key electoral demographics in order to sway votes. In his journal article titled "Digital Marketing in the Disinformation Age", scholar Douglas Guilbeault describes how easily Cambridge Analytica was able to essentially harvest user information, and then use that information to manipulate voting tendencies through targeted advertisements. Guilbeault writes:

Domestic actors can also exploit the influence mechanisms built into social media technologies. One case in point is Cambridge Analytica. In his congressional testimony, Zuckerberg explained how in 2013, Aleksandr Kogan at Cambridge

University created a personality quiz application that gained access to the private data of tens of millions of users, due to Facebook's data policies at the time. Even though Facebook revised its policies in 2014, this did not prevent Kogan from sharing the data with Cambridge Analytica, which then deployed an arsenal of disinformation tactics to support the presidential campaign of then-candidate Donald Trump.<sup>73</sup>

To clarify, these advertisements usually had extreme messaging which played to the more basic human instincts and were therefore more effective psychologically. How does this study pertain to our investigation? Well, the Cambridge Analytica scandal exposed the power social media has in our political discourse and subsequent voting habits. Companies were able to come in and manipulate what we saw and how often we saw certain advertisements about certain policy issues and candidates. At the moment Facebook is publicly claiming they are attempting to address these vulnerabilities, but the fact still remains political actors and the groups supporting them will always be searching for ways to alter the voting patterns of individuals in order to win national elections or, in our case, put someone on the Supreme Court.

As a user we saw no real invasion of privacy, no change in our general Facebook experience, and as a whole the platform did not appear any different. The exception was that as the election drew closer political advertisements began to dominate users' News Feeds. These were no ordinary ads either. The genius of these advertisements was Cambridge Analytica's data gathering technique. This technique then exposed specific users to specific issue ads based off of user information. This means users were targeted based off what would motivate them to get to the polls or change their

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<sup>73</sup> Douglas Guilbeault, "Digital Marketing in the Disinformation Age," *Journal of International Affairs* 75 (2018): pp. 33–42)



vote. If Cambridge found certain policy issues, like national security or immigration, would motivate a user, the same user would receive ads about the crisis at the border or crime being ramped due to Mexican drug cartels. In a piece called *Dissemination Techniques in Disinformation Campaigns* professors Vasu, Ang, Teo, Jayakumar, Faizal and Ahuja reported these particular advertisements were nation-wide, but also concentrated in key electoral areas of the country. These areas included suburban Ohio, northeast Pennsylvania, southwest Michigan, and southern Florida to name a few. As fair as the electoral college is, each presidential election essentially comes down to winning these certain key swing states just mentioned. These scholars write:

[Cambridge Analytica] was used by the Trump Campaign. During the 2016 US Presidential Election campaign, it was believed that Facebook users in key constituencies were targeted with personalised messages or fake news that played on their existing biases. This was just one aspect of the Trump data analytics campaign.<sup>74</sup>

The result was users did not actively know they were being targeted and conditioned to support a candidate or party. Not only that, but these voters were crucial parts of a larger electoral strategies so their support was needed to win the White House in 2016. Users were never the wiser because there was no noticeable change to the everyday Facebook usage. It took investigations conducted by the United States and English governments to actually reveal the extent of this invasion of privacy. No one noticed as their information was mined and then weaponized against themselves.

How was it millions upon millions of Facebook users were blind to such an invasive scheme? Cambridge Analytica simply exploited the weak privacy guidelines Face-

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<sup>74</sup> Norman Vasu et al., "Fake News: National Security in the Post-Truth Era," (Rajaratnam School of International Studies: January 2018), p. 11)

book had and made an incredibly effective, and profitable, business model. Also, users provided all the information for Cambridge willingly through actions on social media websites. In *Dissemination Techniques in Disinformation Campaigns* the professors again describe exactly how Cambridge was able to collect data and then custom build persuasive messaging for individual users to view. They write:

The creation of filter bubbles and echo chambers through the algorithms of search engines, and social media is further exploited by companies developing a model to translate social media data into a personality profile used to predict, and then influence user behaviour. For example, by correlating subjects' Facebook Likes, building profiles, and data harvesting, Cambridge Analytica (CA) apparently can identify an individual's gender, sexuality, political beliefs, and personality traits. This method also uses artificial intelligence (AI) to find out more about the individual, and is able to make accurate predictions on how to convince the individual to take certain actions with the appropriate sort of advert, while also creating a viral effect as there could also be other people in the individual's network who subsequently like the same advert.<sup>75</sup>

This process, while admittedly brilliant, was in part how Donald Trump secured the presidency of the United States. Going further, what these scholars describe accurately portrays the role of social media with party polarization. This immensely powerful platform had the ability to sway the votes of millions of Americans, especially in electorally critical areas of the United States. To simplify this process, Cambridge Analytica was brought on to the campaign to stir up preexisting biases and feelings in exaggerated political advertisements. Playing to voters' inherent biases allowed for a national campaign to target individual voters in key areas crucial to victory.

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<sup>75</sup> Norman Vasu et al., "Fake News: National Security in the Post-Truth Era," (Rajaratnam School of International Studies: January 2018), p. 11)

All of this information and data is compelling. However, the real question is how effective this social conditioning is on the unsuspecting consumer of social media content? Does mass psychological targeting actually yield a beneficial outcome for political messaging campaigns? Perhaps Cambridge Analytica was a fraud and the company could not actually deliver what they promised to consumers? Many scholars in the data field would claim Cambridge Analytica was such a frightful entity specifically because the strategies it utilized were able to alter outcomes on the national stage. According to a study published in the Proceedings of the National Academy of Sciences of the United State of America, scholars Matz, Kosinski, Nave, and Stillwell claim this tactic of large-scale psychological persuasion has quite the observable result on consumers of social media. They write:

The results of the three studies provide converging evidence for the effectiveness of psychological targeting in the context of real life digital mass persuasion; tailoring persuasive appeals to the psychological profiles of large groups of people allowed us to influence their actual behaviors and choices...psychological persuasion might be used to exploit “weaknesses” in a person’s character... In fact, recent media reports suggest that one of the 2016 US presidential campaigns used psychological profiles of millions of US citizens to suppress their votes and keep them away from the ballots on election day. [This strategy] illustrates clearly how psychological mass persuasion could be abused to manipulate people to behave in ways that are neither in their best interest nor in the best interest of society.<sup>76</sup>

Simply put, persistent digital exposure and psychological conditioning are effective at both voter persuasion and voter dissuasion. Such an instrument on the national stage has and will continue to be a formidable weapon when attempting to stir up partisan

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<sup>76</sup> S.C. Matz et al., “Psychological Targeting as an Effective Approach to Digital Mass Persuasion,” *Proceedings of the National Academy of Sciences* 114, no. 48 (2017): p.12717)

sentiments. This conditioning is especially effective when associated with the politically divisive aspects of our federal government like the Supreme Court confirmation process.

One observation which may come to mind after reading this research is candidate Donald Trump has been accused of benefitting from Russian social media interference in our 2016 election. Therefore, because mass psychological conditioning is as effective as scholars say, President Trump, with the help of the Russian government, essentially “stole” the Presidency of the United States. Unfortunately this theory is a political fib told to the American people to serve a partisan agenda. So why did Hillary Clinton lose the 2016 election when nearly every poll in the United States had her winning in a landslide? The short answer is Hillary was wildly unpopular in the eyes of the American electorate and with the national news media.

Many may point to the effects of Cambridge Analytica and psychological effects of constant social media use as a reason why Secretary Clinton lost her bid for the White House. Some may point to the fake Twitter and Facebook accounts as further evidence that Russia’s meddling in our election was the reason Hillary Clinton is not the current president of the United States of America. However, scholars have dispelled this notion because of Secretary Clinton’s general unpopularity and previous scandals. There were numerous research projects launched to look into the 2016 election and the coverage of the two candidates. According to *Identity Crisis: The 2016 Presidential Campaign and the Battle for the Meaning of America* authors John Slides, Michael Tesler, and Lynn Vavreck argue that despite Russia’s attempt to interfere with the presidential election, their attempts had essentially no effect on the result because of the

size of the campaigns' social media apparatuses utilized throughout the 2016 election cycle. They write:

This attention to Clinton's scandal was largely not because of shadowy outlets or Twitter bots pushed false stories about her on social media...very few of these false stories were among the most shared stories on Twitter and Facebook. Instead Clinton's bigger challenge came from mainstream news coverage, for which the norms of objectivity and balance required attention to Clinton's controversies as well as Trump's. Clinton's problem was real news much more than fake news...Russian-sponsored content on social media likely did not decide the election.<sup>77</sup>

This narrative that Russian bots and government actors were the reason the 2016 election went for then-candidate Trump has been widely dispelled. It appears Secretary Clinton's past actions in both the public and private sector are infinitely more responsible for electoral loss on Election Night 2016 than a few phantom accounts on social media sites. Her general representation, among social, print, and televised media, was the real Achilles Heel of the Clinton candidacy. With that being said, this research does not mean social media activity is not as persuasive as otherwise believed. On the contrary social media activity is quite the powerful tool when attempting to convince users of certain truths or ideas.

This revelation supports the claim social media is responsible for altering partisan behavior because the volume of social media activity is more important than a few hyper-partisan posts. What this mean is, according to recent research, political battles are won on volume as opposed to some shadowy actors. In *Identity Crisis* the authors, once again, describe how electoral success is not dictated by "fake news" and their

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<sup>77</sup> John Sides et al., *Identity Crisis: The 2016 Presidential Campaign and the Battle for the Meaning of America* (Princeton University Press, 2019), p.147)

subsequent posts online. Rather, these national campaigns are decided by overall saturation of the social media market. Over the course of the 2016 election there were millions upon millions spent on social media activism and even more posts published by users to affect the viewer's perception of a certain candidate or issue that was relevant to the overall success of the campaign.

These scholars discuss why the few Russian bots and profiles active in 2016 were eventually ineffective in altering the trajectory of the election. They argue any apparent Russian involvement was dwarfed by the money and presence of both Secretary Clinton and then-candidate Trump. They discuss how all the money and hours spent by the Russians was of little consequence in the grand scheme of things. They write:

The money reportedly spent on specific Facebook ads was not targeted effectively at battleground states and was dwarfed by the estimated \$81 million spent by the Trump and Clinton campaigns on digital ads. Moreover, although many news reports cited social media metrics that appeared large on their face...these reports typically suffered from a 'denominator problem': they rarely calculated the total amount of content on various social media and thus what fraction of that content might have been Russian-sponsored propaganda. Given the billions if not trillions of tweets and posts on these media during the election campaign, Russian-sponsored content was an infinitesimal fraction.<sup>78</sup>

It has been widely reported the extent of Russia's engagement totaled an investment around \$100,000.<sup>79</sup> While any Russian funding of political advertisements is undoubtedly concerning, all things considered a \$100,000 investment by Russia was not even

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<sup>78</sup> John Sides et al., *Identity Crisis: The 2016 Presidential Campaign and the Battle for the Meaning of America* (Princeton University Press, 2019), p.199)

<sup>79</sup> Scott Shane and Vindu Goel, "Fake Russian Facebook Accounts Bought \$100,000 in Political Ads," *The New York Times*, (September 6, 2017)

a drop in the bucket when compared to the overall dollars spent by both campaigns throughout the 2016 election cycle. \$81 million was just the dollar amount spent by the official campaigns. There were hundreds of millions more spent by PACs, other candidates, independent expenditures, and numerous other groups/avenues spending exorbitant amounts of money in support of the candidates and causes.

What is left to uncover is how Hillary Clinton lost the White House despite projections of a landslide victory. The answer is simple, volume. President Trump's 2016 campaign, which was similar to the campaigns supporting Justices Gorsuch and Kavanaugh, dramatically out-spent the opposition thereby generating more digital content and subsequent online impressions with voters. This was a huge determining factor for the overall success of these campaigns. For example, in the last six months of the 2016 campaign President Trump's campaign spent over \$44 million just on digital ads on social media sites compared to the \$28 million spent by the Clinton campaign.<sup>80</sup> The point is the same digital strategy which led Trump to the White House is the same way Gorsuch and Kavanaugh were helped onto the Court, a highly-sophisticated and wildly expensive social media presence to sway voters. This amount of money spent on digital ads on social media sites allowed for a highly sophisticated process of advertisement variations and individual customization for each social media user. Essentially President Trump's team was able to tinker messaging down to the specific user on social media:

Aside from the differential in ad spend, Trump's team appeared to be the more sophisticated of the two in how it made use of Facebook's outcome-oriented approach to optimization. All told, Trump ran 5.9 million ad variations, rapidly

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<sup>80</sup> Sarah Frier, "Trump's Campaign Said It Was Better at Facebook. Facebook Agrees," *Bloomberg News*, (April 3, 2018)

testing, tweaking, and killing non-performers — while increasing spending amounts on those that led to the desired outcome...Clinton ran around 66,000 ads during the same time period. Trump also made use of a feature that creates lookalike audiences based on current supporters. Put simply, Facebook's data insights gleaned information from each supporter in an attempt to find others just like them — these 'others' would be new targets, those who weren't already following Trump or interacting with his Facebook messages.<sup>81</sup>

This level of sophistication is still unmatched to this day. Not only is President Trump's level of investment and strategy unparalleled, but this apparatus is not strictly used for the President's campaign. This apparatus is also frequently used to further the President's interests, namely the confirmation of conservative judges to the Supreme Court.

Once again, the campaign was able to maintain favorable public opinion because of the volume of content. The New York Times reported in the first 3 months of the Kavanaugh confirmation push starting in May of 2018, pro-Kavanaugh content was viewed by over 37 million people. The apparatus which drove this content was orchestrated by President Trump's campaign team and his political action committees. In fact, the President is the biggest political advertiser on Facebook, spending hundreds of thousands of dollars more than some of the nation's largest PACs and advocacy groups like the Planned Parenthood Federation of America.<sup>82</sup> Justices Kavanaugh and Gorsuch being involved with this network allowed for the increased likelihood of their confirmation. The overall presence on social media stirred up enough partisan sentiments and party loyalties to force voters to pressure targeted senators around the country.

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<sup>81</sup> Sarah Frier, "Trump's Campaign Said It Was Better at Facebook. Facebook Agrees," *Bloomberg News*, (April 3, 2018)

<sup>82</sup> Sheera Frenkel, "The Biggest Spender of Political Ads on Facebook? President Trump," *The New York Times*, (July 17, 2018)



## Case Studies

Now that we have described the process by which social media was weaponized with the Supreme Court confirmation process, similar to the presidential election of 2016, it is important to show how social media specifically altered the general sentiment of the partisanship associated with the Supreme Court. In early October of 2018 Judge Brett Kavanaugh was officially confirmed to the United States Supreme Court by a vote of 50-48. Justice Kavanaugh's confirmation process was obviously both highly political and incredibly contentious in Washington as well as in-district. Many senators faced unbelievable pressure from constituents to support or oppose Brett Kavanaugh. In response to Kavanaugh's nomination constituents took to Twitter to voice their support or disapproval for President Trump's second Supreme Court nominee. Those tweets and their content were studied by Professors Giabbanelli, Mago, Sandhu, and Vinson in an attempt to understand the Twitter analytics from the confirmation process back in late September/early October of 2018. These scholars discovered Twitter users correlated the confirmation vote of Justice Kavanaugh to mentions of partisanship on behalf of senators on Capitol Hill, both Republican and Democrat. They write:

The results for both analyses are presented in turn. We confirmed 4 out of 7 potential associations (57%) on the October dataset, and 5 out of 7 (71%) on the November dataset. Most importantly, the association between the Supreme Court and Partisan was confirmed in November but not in October. That is, after the confirmation of Judge Brett Kavanaugh, the Supreme Court was associated with the idea of partisanship. This addresses our first research question, thus presenting evidence for a shift in the public opinion of the Supreme Court...This suggests that the confirmation has modified the views that the public holds re-

garding the Supreme Court, and hence more broadly with the partiality of justice in the United States.<sup>83</sup>

This study essentially affirms this thesis's initial claim that forms of media has contributed to the rise in partisan attitudes when regarding the Supreme Court. This study shows that despite the result of the vote, partisan identity and public sentiment continued to rise over time.

Traditionally, after an election, confirmation, or passage of a policy initiative partisan identity is supposed to fall because the political "fight" is over. However, in the case of Justice Kavanaugh it appeared the partisan fight had only just begun. Only one month after the newly-confirmed Associate Justice took the bench he had catalyzed even more discussion and public sentiment about the role of partisanship during the Supreme Court confirmation process. After Justice Kavanaugh's confirmation many Twitter users began attributing his confirmation to partisan loyalties. The result of this is that the inter-connectivity of Twitter proliferated this sentiment and way of thinking across millions of users. Twitter's platforms allows for this universality through the usage of the hashtag, or topic indicator, in which other users can be exposed to tweets all over the world with the same hashtag. Similarly, Twitter tracks the top "trending" hashtags so users can see what the most popular hashtag on the site is at that moment in time. Undoubtedly during the hearings, confirmation vote, and subsequent coverage of the Court the popular hashtags were not favorable to Justice Kavanaugh.

The confirmation process of Justice Kavanaugh was not typical. There were multiple aspects of Justice Kavanaugh's confirmation process which contributed to

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<sup>83</sup> Mannila Sandhu et al., "From Associations to Sarcasm: Mining the Shift of Opinions Regarding the Supreme Court on Twitter," *Online Social Networks and Media* 14 (2019): pp. 1–11)

partisan sentiments. First and foremost, the allegations of sexual assault made by Dr. Christine Blasey Ford against Brett Kavanaugh poured lighter fluid onto an already raging partisan fire in the Senate and with the American public. Dr. Ford's testimony surely did not assuage party divisions and ideologies because so much was at stake for both parties. After Dr. Ford's hearing the general rhetoric used by either side was less than cordial. Regardless of what we each believed it would also be naive to think Dr. Ford's testimony was not politically advantageous for Democrats in the Senate as another way attempt to sink Justice Kavanaugh's confirmation. Additionally, partisan sentiments were destined to flare up anyway because this country was a month away from the 2018 midterm elections which would be a referendum on the highly controversial new President, Donald Trump.

Despite the numerous controversial aspects of this confirmation process this study describes the power of Twitter, in which users further associated the Supreme Court with partisanship. This study recorded a nearly 20% increase in the correlation between the highest court in the land and partisan rhetoric/accusations. Regardless of these pertinent factors it remains clear that during, and especially after, the Kavanaugh confirmation process Twitter was complicit in intensifying political beliefs regarding the Supreme Court and partisan identities. Additionally, this study is important to this research because it shows actors on social media utilized the recent confirmation battle as cannon fodder to drive up partisan sentiments before a hugely important midterm election in November of 2018. This partisan activity and association was seen more in November than October because the election was approaching and politicians wanted to use the Kavanaugh confirmation as a political club to win political majorities across

the country. This means, according to the study, the view of Justice Kavanaugh and the Senate became much more partisan in nature because we were in the middle of an immensely important and contentious election cycle.

Using Justice Kavanaugh could admittedly be a false indicator of a larger systemic problem because of the controversy surrounding his rise to the Supreme Court. This is a fair concern. So, let's look at the system as a whole. The renowned legal think-tank the Heritage Foundation commissioned a report in May of 2019 in which they compared Senate opposition to judicial nominees across multiple administrations. The result was every President from George Washington to Bill Clinton never had opposition to their judicial appointments higher than 3% of all appointments made under a presidency. Essentially, these judicial appointments were investigated and debated, but ultimately 97% of all presidential appointments were confirmed by the Senate.<sup>84</sup> This number illustrates a healthy partisan relationship between Republicans and Democrats in the Senate as well as a healthy relationship with the president's choices for the federal judiciary. This is no longer true under the Trump Administration. The Heritage Foundation discovered Senate opposition (in committee, cloture, and roll call votes) has increased a staggering amount. The Heritage report finds:

Since President Donald Trump took office, the regular order of the confirmation process has turned on its head. The percentage of judicial nominees facing opposition – even a single vote – to confirmation has skyrocketed from the traditional 3 percent to more than 70 percent...More than 40 percent of all Senate votes against confirmed judicial nominees since 1789 have been cast in the last 30 months against Trump nominees. The average Trump nominee has faced 12 times the confirmation opposition as the average nominee of President John F.

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<sup>84</sup> Thomas Jipping, "Judicial Appointments During the 115th Congress," *The Heritage Foundation*, (May 15, 2019)

Kennedy to President Barack Obama. Nearly 40 percent of all votes in American history to filibuster judicial nominees have occurred since Trump took office in January 2017.<sup>85</sup>

These figures are almost hard to believe. Despite the fact we live in a highly politically contentious time this blatant display of opposition towards the President along party lines does little to disprove this theory. This research does not suggest a gradual increase in opposition to nominations as this country progressed. Rather, almost immediately after President Trump's arrival in Washington his political rivals began an all out resistance, especially with regards to the federal judiciary. This is partisan politics at its worst and it is not simply limited to the Supreme Court.

This fact helps support the claim because this debunks the argument Supreme Court nominations are naturally partisan affairs. This research goes further and states partisanship, not the importance of the role, is also a factor which needs to be addressed in this argument. True or not, the fact is since partisanship has infected the majority of judicial appointments under the Trump Administration we can safely assume partisanship is not only limited to the Supreme Court. Rather, the party lines have been drawn and both sides are entrenched in partisan tactics throughout the entire federal judiciary.

The last major aspect of partisanship social media platforms affect during confirmation battles is arguably the most important component to any political campaign; the ability to fundraise. Digital fundraising in recent years has taken over as the main way federal campaigns raise money. The cause of this political trend is due to the universality of social media across voters of all ages, socio-economic backgrounds, and

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<sup>85</sup> Thomas Jipping, "Opposition To Judicial Nominees Skyrocketed From 3 To 70 Percent After Trump Took Office," *The Federalist*, (July 6, 2019)

geographical areas. The constant need for money forces these candidates to have a constant presence on social media. The same is true for Supreme Court nominees and their “campaign” for confirmation. While nominees are not technically political candidates, the partisan entities supporting or opposing confirmation raise money off nominees. This then allows these partisan actors to create digital advertisements targetting the constituencies of vulnerable senators in order to create political unrest back home and force senators to vote a certain way. Author and scholar Richard Vining has written about how digital fundraising, particularly with respect to e-mail, has further increased overall partisanship during these confirmation processes because it provides the capital needed to fight political battles. Vining writes:

Groups supporting nominees were more likely to request donations. The higher likelihood of requests for funds in e-mails during the early stages of the confirmation process may, as Shames and Weiner (2006) suggest, lead to polarization in the confirmation process. Groups favoring confirmation tell supporters that their goals are endangered and emphasize the need for funds to thwart opposition.<sup>86</sup>

Regardless of the judicial philosophy or party loyalty, money allows both sides of the aisle to raise the stakes of each confirmation to the Supreme Court. Before the instantaneous delivery of dollars online these political battles in Washington would be much more reserved because there was not enough capital to broadcast advertisements and information across the country. Since the internet and interconnectivity of social media both parties have been able to amass large amounts of money at an accelerated rate. This fundraising method created further partisan divides during Supreme Court confir-

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<sup>86</sup> Richard L. Vining, “Grassroots Mobilization in the Digital Age: Interest Group Response to Supreme Court Nominees,” *Political Research Quarterly* 64, no. 4 (Dec. 2011): pp. 790–802)

mations because this money went on to fund more targeted advertisements aimed at stoking partisan sentiments across the country.

### **Controversy and Partisanship Before Social Media**

This chapter of the thesis is not aimed at convincing the reader that before social media there were no controversial, highly partisan confirmation processes. We know the opposite is in fact true. However, these case studies and research do point towards the reality that social media does increase partisan responses within the American electorate. The numerous polarizing aspects of social media all support this thesis's claim that this form of media is responsible for driving partisan behavior during Supreme Court confirmation processes. Perhaps one of the most infamous partisan confirmation battles happened nearly 20 years before social media would be created. Judge Robert Bork was nominated to be an Associate Justice on the United States Supreme Court by President Ronald Reagan in 1987. The significance of this confirmation was the manner in which the Senate handled the confirmation process. Bork's rejection was, and still is, the largest vote margin of defeat recorded for any Supreme Court nominee. This rejection was also a watershed moment for the United States as Judge Bork was arguably the first nominee to be rejected solely because of his judicial philosophy. Senate Democrats actively worked to sink Bork's nomination because of the alleged views he had on civil rights, the highly contentious *Roe v. Wade* decision, and the role and power of the federal government to name a few policy areas. Senate Democrats were convinced Bork's judicial ideology would be detrimental to their attempts to champion these issues in order to win favor with the electorate and retain power. In the end powerful voices in the Senate, like former senator and Vice-President

Joe Biden, created a ruthless media campaign against Judge Bork. The allegations and statements made against Judge Bork during his confirmation hearings and through numerous interviews made supporting his confirmation politically risky for both Republicans and Democrats alike. In the end, Judge Bork's confirmation was rejected by a vote of 42-58.<sup>87</sup>

Before Judge Bork's nomination and eventual rejection, sitting senators would hold confirmation hearing to investigate a nominee's qualifications more-so than the judicial ideologies of the nominee. The confirmation vote for Judge Bork initiated a shift in the role of the Senate with regards to the process of advice and consent. While Bork was not the first nominee to be rejected, he was and still is the case study scholars and senators alike refer to as the beginning of party politics infecting the confirmation process. Authors Norman Vieira and Leonard Gross describe this shift in their book *Supreme Court Appointments: Judge Bork and the Politicization of Senate Confirmations*. They wrote:

In sum, most of the Supreme Court nominees voted down by the Senate were rejected because of senatorial courtesy, personal animosity toward the candidate, or antagonism based on political activity. Concern about the nominee's judicial philosophy was rarely the basis for the Senate's action. The reliance on grounds other than ideology clearly reflects that traditionally, most senators have been unwilling to vote against an otherwise qualified Supreme Court nominee on the basis of ideology alone.<sup>88</sup>

The confirmation was so unique Judge Bork became a verb when discussing the politics of judicial confirmations. To "bork" a nominee is to reject them based off of judicial

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<sup>87</sup> Norman Vieira and Leonard Gross, *Supreme Court Appointments: Judge Bork and the Politicization of Senate Confirmations* (Carbondale, IL: Southern Illinois University Press, 1999)

<sup>88</sup> Norman Vieira and Leonard Gross, *Supreme Court Appointments: Judge Bork and the Politicization of Senate Confirmations* (Carbondale, IL: Southern Illinois University Press, 1999), p.45)



philosophy despite the impressive credentials a judge may have. This term is still used today and was reiterated many times during the most recent partisan displays the American public witnessed during the confirmations of Justices Gorsuch and Kavanaugh. All of this transpired before the proliferation of social media. So, an argument could be made social media does not encourage partisanship because the process itself has been partisan since Judge Bork.

However, since the early 2000s when social media became a prominent tool in politics the vote margins have drastically narrowed, furthering the claim that social media has a role to play. For instance the last 5 confirmation votes held by the Senate, under three different administrations and different parties, puts the average margin for confirmation at just 18 votes.<sup>89</sup> Compare this average to the other votes that previously resulted in justices being confirmed, oftentimes with vote margins of 98 votes. This just further shows that since Judge Bork these political fights are not fought exclusively in the halls of Congress, but rather are fought in public through social media. Therefore, these fights happen instantaneously in the public eye forcing political and cultural responses.

## **Conclusion**

Even without the examples like Judge Bork and Justices Kavanaugh and Gorsuch the Supreme Court confirmation process has been and will continue to be a partisan affair. Frankly, there are countless issues dividing this country and should be hotly contested and addressed. Issues surrounding race, equality, civil rights, privacy, and numerous other policy topics affect the daily life of the American people and so the

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<sup>89</sup> "Supreme Court Nominations (Present-1789)," United States Senate (June 11, 2019)

public has a right to be heavily invested in who ascends to the highest court in the land. Having said that, these confirmation processes are no longer about qualifications and the humble responsibility senators have to confirm justices to the United States Supreme Court. Rather, this process has become a partisan exercise because of the tools available to create a narrative around a certain nominee or issue. The use of social media during the confirmation process has put these fights on Capitol Hill in the pocket of any voter with access to the internet on their phones or other devices. Social media, and its power to coerce and ability to reach audiences all over the world, has been instrumental in raising the stakes of confirming justices to the bench. As the stakes are raised, so too is the political significance which makes for partisan showdowns that are unparalleled on Capitol Hill. Social media has driven certain messaging and proliferated partisan sentiments well outside of Washington thereby making it a powerful tool for political actors when attempting to secure a seat on the Supreme Court of the United States.

## **Chapter 3: Supreme Tangibility**

### **Introduction**

This final chapter is an examination into how both the newspaper and direct-mail industries have been a critical factor in the proliferation of partisan sentiment and overall polarization during Supreme Court confirmations. This chapter will examine scholarship associated with tangible media's ability to alter political perceptions, incite political engagement, and invoke tribalist tendencies. Once again this research will rely on examining contemporary confirmation processes as well as the psychological factors found within the American print media industry to prove this thesis's major contention that this media form furthers partisan division within the United States. Similar to the previous two chapters, a major area of discussion will revolve around corporate newspaper ownership and the subsequent corporate interests that motivate media content during Supreme Court confirmation battles. The partisan fight associated with the Court is perhaps the most contentious aspect of modern day American politics. What this examination ultimately shows is that the realm of tangible media plays an integral part in the perception, activation, and eventual confirmation or rejection of a nominee for the Supreme Court of the United States.

Seeing as print media is the oldest form of media in this country it is imperative to investigate the effects the newspaper industry and political direct-mail campaigns have affected the partisan polarization during the Supreme Court confirmation process. Even before gaining our independence from Great Britain in the 18th century the United States of America has had a newspaper industry to report the news. Over time, local and national newspapers grew and evolved into a multi-billion dollar industry relatively

ubiquitous across the nation. The name at the top of the newspaper itself may change, but the fact is a newspaper is generally available in every city and town across the U.S. This universality presents another avenue of research applicable to this thesis and therefore needs to be examined along with television and social media. Additionally, the newspaper industry is unique in the sense that not everyone may have a smart phone or personal computer to check social media, nor does everyone have a television in their home to consume the news of the day. However, local and national newspapers are sold at stores, on street corners, or are delivered directly to one's door every morning all across this country. The reality is the modern day newspaper is a staple of news consumption and a potential battleground for partisan ideologies.

Just like the modern newspaper, the way we experience political campaigns has developed over time as well. As opposed to former aristocratic rule, our democracy evolved into a more representative republic where a single vote can alter the outcomes of elections. Similarly, any American who meets certain requirements can wage a campaign for federal office. In response to this evolution, politicians needed to court more votes from all over their constituencies without breaking the bank. Politicians needed a cheap and widespread method of delivering persuasive messaging right to voters within their constituencies to convince and eventually mobilize voters to the polls in order to win on Election Day. Here is where campaign mailers come into play. The average voter has no doubt encountered mailers in their mailboxes or stuffed in their doors at some point and for good reason. Campaign mailers are powerful weapons utilized in today's political arena and their effects are felt on local, state, and federal levels of government.

## Market Share and Circulation

Before examining the research on whether or not newspapers are responsible for increased political activation it is important to understand certain crucial realities during this portion of the discussion. Additionally, it is important to understand the large actors who essentially control the state of the contemporary American newspaper industry. Within this country there are specific newspapers with large circulations that equate to millions of copies sold daily and then there are more local circulations generally limited to the size of a certain city or town. These larger newspapers, such as The Wall Street Journal or The New York Times, are giant corporate businesses with corporate interests. Starting in the 1980s and 90s media conglomerates have engaged in dramatic market consolidation resulting in fewer independent newspapers and more publications being brought under the corporate umbrella.<sup>90</sup> We discussed this consolidation when looking into television and the same troubling results are present in the newspaper industry. In a study commissioned by the Center for Innovation and Sustainability in Local Media at the University of North Carolina the researchers revealed three media companies dominate newspaper circulation in this country. The research found:

As of mid-2016, the three largest newspaper chains — New Media, Gannett and Digital First — own 898 newspapers, nearly twice as many as the three largest chains in 2004. They control a combined 12.7 million in circulation.

- New Media/GateHouse owns 432 papers in 32 states and controls 3.6 million in circulation.
- Gannett currently owns 258 papers in 34 states and has 5.2 million in circulation. In recent months, Gannett has made two unso-

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<sup>90</sup> “The Rise of a New Media Baron,” Center for Innovation and Sustainability in Local Media (University of North Carolina, 2019)

licited attempts to buy tronc/Tribune. If brought to fruition, such an acquisition would add 104 newspapers with 3.4 million in circulation to Gannett's portfolio.

- Digital First owns 208 papers in 15 states and has 3.9 million in circulation.<sup>91</sup>

Most of the newspapers being absorbed into these corporate structures are local media market publications, many of which faced serious financial problems with the rise of the Internet and public focus on national, name-brand newspaper outlets. As a result, these much larger media titans have spent billions of dollars consolidating in order to survive this cultural change seen in American media.

This consolidation has led to a growing concern that the American news industry can be weaponized or skewed to affect all other industries, especially politics. If a few key companies control the flow and the content of information they can similarly control what Americans read on a daily basis thereby dictating the terms our democracy as they see fit. Corporate interests are reflected in the newspaper columns we read providing these conglomerates the ability to create or alter our national political system into one that is generally favorable to newspaper executives and their ideological, financial, and political desires. In the same research by the Center for Innovation and Sustainability in Local Media also shares these concerns. The report displays the dangers of newspaper consolidation by highlighting the possible outcomes associated with a monopolized industry. The research states:

The massive consolidation and reshuffling of ownership since 2004 has both short-term and long-term ramifications for communities that have historically depended on their newspapers to provide them with the news and information

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<sup>91</sup> "The Rise of a New Media Baron," Center for Innovation and Sustainability in Local Media (University of North Carolina, 2019)

that strengthens democracy and capitalism at the local level. The larger the chains become, the more detached and disconnected newspaper owners become from the communities their newspapers have historically served.<sup>92</sup>

Consolidation leads to the lack of objectivity and the lack of objectivity means the news Americans read isn't fully truthful. The more news publications media giants own the more they get to determine what is relevant to share with the American public and what to bury. Having this sort of power in the hands of a few corporate elites is incredibly dangerous to our democracy. This type of consolidation turns the news into a group-think corporate engine which reports the news by making sure to toe the company line. This process can mean attacking political rivals and parties or even nominees for the Supreme Court. Perhaps the most concerning about this media consolidation is that it has allowed, if not proliferated, liberal journalism to dominate the mainstream news.

This trend of liberal journalism should not come as much of a surprise to the outside observer because media executives consistently advocate for a certain level of social justice through truthful reporting. The Washington Post even has a famous slogan about the paper's responsibility to defend American values through the news. Their slogan, "Democracy Dies in Darkness" is somewhat ironic considering the paper was bought out by an investment company owned by billionaire Jeff Bezos and was widely criticized for allegedly suppressing and skewing news to increase readership from the American left. Regardless of what really transpired, the Washington Post is just one example of many. In a joint academic venture scholars from Arizona State University and Texas A&M University a study was conducted to examine a sector of American journal-

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<sup>92</sup> "The Rise of a New Media Baron," Center for Innovation and Sustainability in Local Media (University of North Carolina, 2019)

ism which tends to be the most objective, financial reporting. The report's findings actually portrayed even more issues within American journalism; ramped liberal bias. The findings read:

We find that financial journalists with liberal political views outnumber those with conservative political views by more than 13-to-1...Liberal journalists are also more likely to believe that portraying companies in an unfavorable light will generate more readers of the article and more interest on social media and will result in heightened credibility as a reporter and positive feedback from their superior. In addition, liberal journalists are more likely to indicate that promoting social or economic justice is an important objective of journalism. These results suggest the political views of journalists can shape business news and corporate reporting.<sup>93</sup>

Political views and ideologies are obviously a key indicator for understanding how news is to be reported in the national press. However, political actions speak volumes as well.

The last study to examine was commissioned by the Center for Public Integrity and was initially reported by the Columbia Journalism Review that investigates bias and its affects on the Supreme Court. In this article reporters Dave Levinthal and Michael Beckel examined the FEC filings for hundreds of national journalists and their campaign contributions during the 2016 presidential election. The results were overwhelmingly in favor of Secretary Clinton's campaign, who most all of these journalists covered during the cycle. The article reads:

People identified in federal campaign finance filings as journalists, reporters, news editors or television anchors—as well as other donors known to be working in journalism—have combined to give more than \$396,000 to the presidential

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<sup>93</sup> Andrew Call et al., "Meet the Press: Survey Evidence on Financial Journalists as Information Intermediaries," (Arizona State University: February 2020)



campaigns of Clinton and Trump, according to a Center for Public Integrity analysis. More than 96 percent of that cash has benefited Clinton: About 430 people who work in journalism have, through August, combined to give about \$382,000 to the Democratic nominee, the Center for Public Integrity's analysis indicates.<sup>94</sup>

Important media figures and journalists who the public placed its trust in bringing objective reporting were nearly all pulling for Hillary Clinton to ascend to the Oval Office. This is pertinent to our discussion because if these individuals wanted Secretary Clinton to win in November it is not a stretch to say they also would have supported her vision for the Supreme Court and any nominees she chose for the bench. After all, picking justices to the Supreme Court is a crucial aspect of the American presidency and is also a huge platform issue for candidates seeking the office. So what we are left with is a print media that is supposed to be objective about reporting on Supreme Court nominees despite their obvious bias against the current administration. This is a concrete example of how the news coverage during Justices Gorsuch and Kavanaugh was obviously painted in such a way to reflect the views of liberal journalists. It is hard to expect these partisan journalists to put aside their political views as well as their political actions for objectivity.

All of this research and study paints a drastic picture about the state of the print media. It also shows the uphill battle for any conservative judge nominated during the last 4 years of the Trump Administration or for any Republican administration or majority going forward. This media consolidation coupled with the views of the majority of American journalists has created another political battlefield with regards to the Ameri-

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<sup>94</sup> Michael Beckel and Dave Levinthal, "Journalists Shower Hillary Clinton with Campaign Cash," Columbia Journalism Review (The Center for Public Integrity, October 17, 2016)

can newspaper industry. The same industry that broadcasts “objective” news to tens of millions of readers everyday has also made their political preferences known, even if these views are displayed in private. These views are then broadcast to unwitting readers on a daily basis, especially during times of great political tribalism such as nominations to the Supreme Court. As newspapers continue to consolidate there is less objective journalism for public consumption. However, even with this small fraction of publications being left alone from corporate ownership the tangible newspaper has the ability to alter political perceptions regardless of circulation rate.

### **Overall Polarization Efficacy of Newspapers**

Right off the bat it is important to note biases exist in the print media as it does in all other forms of media that have been examined so far. This determination is not only made by examining ownership, but by examining the political leanings of the newspaper editorial boards and the presence of opinionated pieces which are not relegated to the “Opinion” or “Editorial” sections of the paper. In other words, scholars examine a paper’s proclivity to run stories which are editorialized but are presented as unbiased journalism. These indicators have been examined in great detail and point to a harsh truth about the current state of print journalism. The truth is, whether abundantly clear or not, major newspaper companies wield a tremendous amount of power over readers. According to a study published in the *Journal of Politics* by Riccardo Puglisi and James Snyder Jr. they argue within the major national papers exists political biases that are broadcast to millions of readers on a daily basis. The article reads:

The main finding is that there is a strong correlation between the partisan leaning of newspapers as measured by their endorsement behavior and the partisan bias in their coverage of political scandals. Specifically, Democratic-leaning

newspapers—i.e., those with a higher propensity to endorse Democratic candidates in elections—give significantly more coverage to scandals involving Republican politicians than scandals involving Democratic politicians, while Republican-leaning newspapers behave in the opposite way. This bias in the coverage of scandals is not confined to the editorial page, but also affects the news section. While the fraction of stories devoted to political scandals is on average very small, the magnitude of the coverage bias effect is large in relative terms: a one-standard-deviation increase in a newspaper's propensity to endorse Democratic candidates is associated with an increase in differential coverage of Republican versus Democratic scandals of 26%.<sup>95</sup>

These statistics are rather significant for the purposes of this research because it highlights political biases which directly affect the writing in most read news publications in the country. These biases come out during coverage of politically embarrassing events and are not confined to the editorial/opinion sections of the paper. Rather, Puglisi and Snyder both agree these tendencies spill over into the “News” section of these publications, which is supposed to be unbiased journalism. Instead, the news outlets a majority of Americans consume on a daily basis are openly and willfully pushing partisan sentiments onto their specific readership. This blatant partisan ideology is then consumed by the readers and is misconstrued as independent analysis.

This source does not stop at revealing partisan tendencies. Rather, this scholarly pair also discuss how newspapers know their audiences' political affiliations and therefore selectively pander to their readership to keep their business profitable. In this context, “pander” means that allegedly unbiased journalists will selectively alter their reporting to portray their political opposition in a worse light in order to appease their readers, especially if these scandals happen to be occur geographically close to the

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<sup>95</sup> Riccardo Puglisi and James M Synder, “Newspaper Coverage of Political Scandals,” *The Journal of Politics* 73 (August 3, 2011): pp. 931-950)

paper. For example, if a scandal occurs in New York City then the New York Times is more likely to cover the incident in a negative light because it happened in the paper's backyard. In addition to the apparent pandering, these large national news outlets have also been found to be using their large circulation apparatuses as a weapon against political rivals. Puglisi and Snyder state:

We also find evidence that biased coverage of scandals “panders” to the partisan leaning of readers but only for those scandals which are local—i.e., scandals involving politicians that are based in the same area where the newspaper is sold. From this point of view, while supply-led coverage bias would make use of any news material which is suitable to the purpose (i.e., any scandal on the opposite political side, irrespective of the geographical location of those involved), slanted coverage which caters to confirmation-seeking readers appears to be constrained by their ex ante preferences, in this case an interest for local people and events. We also find some evidence regarding factors that are correlated with the overall coverage of scandals. Newspapers with higher circulation systematically devote more coverage to political scandals, at least in the news section.<sup>96</sup>

These larger papers with larger readerships devote more column inches to politically embarrassing events for their political rivals because it increases circulation. These actions appeal to readers political ideologies therefore ensuring their continued business. This indicates the newspaper industry has become a bloodsport and objectivity is not valued in journalism because it does not pay the bills. Rather, news organizations are spoon-feeding readers exactly what they want to read in the paper. Add this biased reporting with large national circulations and the result is a form of print media that has been weaponized against political rivals. All of this is to say partisan sentiments are

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<sup>96</sup> Riccardo Puglisi and James M Snyder, “Newspaper Coverage of Political Scandals,” *The Journal of Politics* 73 (August 3, 2011): pp. 931-950)

stoked on a daily basis by the newspaper industry. The result is millions of consumers read news articles with underlining political opinions. This fuels political entrenchment on both sides thereby raising the level of partisan behavior as a whole.

This study relates to the Supreme Court confirmation process because of the recent confirmations. Its fair to assume most voters would agree Justice Kavanaugh's confirmation process could be considered a political scandal due to the sexual assault allegations levied against then-Judge Kavanaugh by Dr. Christine Blasey Ford. With Republicans holding a majority in the Senate chamber, Brett Kavanaugh's confirmation appeared to be a near certainty. However, once these allegations made their way to Capitol Hill and the national press Kavanaugh's confirmation became a toss-up. As the scandal unfolded, according to the data from Puglisi and Snyder, liberal leaning newspapers began their assault on Kavanaugh in order to satiate their readers. Therefore the Brett Kavanaugh scandal, according to the logic of this study, was reported on partisan grounds and was skewed and politically manipulated thereby raising partisan sentiments because of the biased coverage. Readers responded by flooding senators' offices with calls, emails, and in-person protests in an attempt to persuade or dissuade senators on Kavanaugh. This wildly partisan response was fueled, in part, by the coverage Justice Kavanaugh and Republicans received during the hearings and eventual testimony of Dr. Blasey Ford. The political pandering, national circulations, and blatant partisan ideologies spilling over from the opinion sections to the main sections of the paper are all examples of how the newspaper industry incites, and profits off, partisan reactions to national political events.

Some could argue while national newspapers have this power to persuade and activate voters the reality is numerous smaller newspapers with circulations in the thousands lack this ability. Being able to definitively state the effect the newspaper industry as a whole has on American politics means examining local newspapers in the same way as national papers. For instance, newspapers like the Wall Street Journal, the New York Times, the Washington Post, the Los Angeles Times, and other national news organizations have audiences both formidable in size and which allows for the newspaper to have a national presence. Therefore, these organizations can afford newsrooms filled with hundreds of reporters with access to the highest levels of government and American society. The result is the readership is exposed to higher quality, more in-depth reporting on issues affecting the country. Conversely, local newspapers have smaller budgets, smaller staffs, and smaller overall reach. These local organizations tend to focus on what affects the individual community rather than report on national issues. This is because many of the national issues covered in larger newspapers tend to have little to no affect on the daily lives of local readers. Some larger political fights taking place in Washington may not appeal to these Americans because they are more concerned about their farms, paying bills, community development and security, or hundreds of other issues facing small town U.S.A.

Similarly with politics, readers of local newspapers tend to care more about local political issues as opposed to the chaos of national politics in Washington because it is not applicable in small town daily life. German scholars Christian Burns and Oliver Himmeler conducted a study into how local newspapers affect local political landscapes and general government efficiency. Their findings indicate local news organizations

have rather substantial effects on local government because of the papers' ability to captivate and inform audiences. Burns and Himmler write:

We find robust evidence that having an active and locally focused newspaper landscape can be a cornerstone in establishing political accountability. The basic idea is that a more informed electorate provides incentives for incumbent politicians to behave well. Because newspapers serve as a primary source of information for voters, their circulation in a jurisdiction should have an impact on policy outcomes...The results suggest that a larger share of informed voters goes with larger efficiency. This connection is stronger in small and non-central municipalities.<sup>97</sup>

Burns and Himmler's research focused on how local newspapers kept local politicians accountable. Plus, their study found higher levels of local readership/subscriptions increased local government efficiency in terms of spending and good governance. This research is the first step in describing the influence and overall reach of local newspapers. Burns and Himmler show the reporting in local newspapers has a significant effect on how voters view government and how this reporting can motivate citizens to engage or seek change from their government. This motivation is not limited to local government efficacy. Rather this political motivation, originally created from their local news coverage, can manifest itself on the federal level as well.

Burns and Himmler's work on local newspapers affecting local politics helps illuminate a much larger point that is helpful in understanding the importance of local newspapers on political activation as a whole. Burns and Himmler argue local newspaper help strengthen local government and generally ensure a more efficient, honest form of government. This action thereby increases the overall political and government-

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<sup>97</sup> Christian Bruns and Oliver Himmler, "Newspaper Circulation and Local Government Efficiency," *The Scandinavian Journal of Economics* 113 (June 2011): pp. 470-492

tal awareness of these localities as well as political engagement from the electorate. According to a study conducted by scholar Satish Patel titled “Reinventing Local Governments: People’s Participation and Empowerment”, this proliferation of political action on the local level directly translates into national action by the local electorate.

The grass root institutions will remain genuine institutions of democracy if there is genuine scope for people's participation and empowerment otherwise these institutions will remain as institutions without roots. It can be said that the real strength of local governance lies in the awareness, involvement and participation of inhabitants of the area in all the activities concerning them. It is visualized that literacy, awareness, access to information and involvement in the decision-making accelerate the pace of people's participation in local governance. In sum, strengthening of governing institutions at local level ensures the overall growth and development of a country. People's participation and empowerment enable growth with equity along with ensuring the development of democratic process.<sup>98</sup>

What this study reveals is when democracies strengthen their local governments, democracies experience a similar change on the national level. Local empowerment leads to shifts in national majorities and national priorities. Therefore, voters who strengthen their local democracies will begin to demand the same from the federal government. This access to information expedites this spark for national institutional change. One major institutional pillar of our federal government is the Supreme Court. It is reasonable to suggest when voters demand institutional change, part of this change is the desire for Supreme Court Justices whose views align with their own. This is important for our purposes because these two studies illustrate how local newspaper media can have an impact on federal politics. Go one step further and it is clear

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<sup>98</sup> Satish L Patel, “Reinventing Local Governments: People's Participation and Empowerment,” *The Indian Journal of Political Science* 72 (June 2011): pp. 403-407)



how local American newspaper coverage of a Supreme Court confirmation process can in turn encourage voters in smaller communities to demand a certain result from their elected officials on the federal level. These pieces of research show local newspapers have a direct effect on citizens demanding change from local government and how this search for government responsibility translates to national change.

Understanding the reach and effect smaller newspapers have on local voters is the just half of the picture. The studies by Burns, Himmler and Patel describe how local news can motivate voters to seek political change in their communities at the ballot box. However, we must also show local news outlets cover national news because then it would show that smaller newspapers not only have the ability to alter local voting behavior, but similarly bring national news to small town America. This would then suggest local newspapers can motivate voters because of national issues. Scholar Valerie Hoekstra's research accomplishes just that. In her book *Public Reaction to Supreme Court Decisions* she argues that despite what many may generally think, local media outlets actually cover the Supreme Court quite closely. While the common thought is local media only covers local issues, the fact is when certain events saturate the national news local media similarly pays attention. When the court is engaged in immensely controversial decisions or confirmation hearings Hoekstra argues voters all over the country, especially in local markets, receive constant coverage. A good example would be how the Court was covered during the Supreme Court's intervention in the 2000 presidential election. Hoekstra claims that this potentially nation-altering event depicted the power the Court has when filling column inches in local papers. She writes:

For weeks, the Court's decision simply saturated the media, and consequently, people across the nation were interested in the Supreme Court. Many Americans also know of the Court's involvement in other controversial issues such as abortion, school desegregation, and flag burning. At other times, such as the nomination hearings for Clarence Thomas or, prior to that, Robert Bork, the Court has also been squarely at the center of American politics...[the Court] is by no means removed from the public eye. The media, especially the local media, pay a great deal of attention to the Court - much more than previously recognized.<sup>99</sup>

Justices Brett Kavanaugh and Neil Gorsuch's confirmations were just as partisan as those of Justice Clarence Thomas and Judge Robert Bork and therefore received a similar amount of national coverage during their confirmation processes. What Hoekstra argues is while the Court is, by far, the least covered branch of the federal government it does not mean the public ignores decisions and events associated with the federal judiciary. Despite the fact local papers tend to have a more narrow scope when reporting events this does not automatically suggest smaller communities do not care about what goes on in Washington. Specifically, Hoekstra argues Americans consuming their news from local media in fact pay a great deal of attention to the Court. Granted, many Americans cannot name certain legal cases or justices of the Court, but then again the same can be said of Congress and the ability to name members of Congress and legislation on the floor of the House of Representatives or Senate. Regardless, the point is the politics associated with the Supreme Court constantly saturates all media markets in this country because of the importance of the institution. This research is

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<sup>99</sup> Valerie J Hoekstra, *Public Reaction to Supreme Court Decisions* (Cambridge University Press, 2003), p.51)

important to our discussion because it contradicts the idea that print media, especially in smaller communities, has little effect on voters in this country.

As a whole the argument that newspapers, especially in local communities, have little to no influence on voter behavior is certainly a contested theory. Based on these studies alone there is enough evidence to suggest local newspapers do possess the ability to report national events more frequently and with more fervor than previously believed and the power to persuade voters to engage politically. Like their larger counterparts, local print media has an effect on federal judicial politics. Simply put, confirmation battles make for compelling news reporting regardless of which paper one picks up in the morning.

Overall, the American newspaper industry can be a powerful ally or adversary when seeking 51 votes in favor of confirmation in the United States Senate. The fact is newsworthy events about the Court on any level are likely to receive attention by the print media regardless of circulation size. No matter the paper, no matter the ownership, no matter the political tendencies the reality is events surrounding the Supreme Court is newsworthy and will receive coverage for public consumption. Confirmation processes in particular provide newspapers with plenty of material to fill column inches. Overall, there is enough evidence to suggest the newspaper industry does contribute to partisan sentiments because of their corporate directives, partisan coverage, circulations, and their ability to motivate readers on national and local levels. While it may appear this industry may not be as large of a concern for political actors it is apparent the newspaper industry still has a considerable amount of power during judicial confirmations. This industry will continue to adapt to ensure its survival, even if that

means transitioning completely away from paper to a digital medium. One way or another, the newspaper world will survive and continue to insert itself into the partisan fight which accompanies confirmation battles on Capitol Hill.

### **Downturn of Traditional Paper Media**

When thinking of the current state of the newspaper and direct-mail industries it is important to realize the business itself has been experiencing a tremendous downturn over the past 30 years. Before the rise of the Internet, and subsequently the rise of online newspaper subscriptions and digital political advertisements, print media dominated American media consumption. The television medium was undoubtedly popular, but newspaper still reigned supreme as the primary method of consumption for Americans. According to the Pew Research Center both weekday and Sunday newspaper subscriptions hit their peak in the early 1990s with around 60 million subscriptions for each category. Since the the number of newspaper subscriptions has been in free fall.<sup>100</sup> As the Internet gained popularity and daily usage, newspaper companies in particular attempted to salvage business by offering online subscriptions to its customers. Utilizing the Internet is needed now more than ever due to the horrible year the industry had in 2018 when newspapers reached their lowest circulation levels since 1940 (less than 30 million weekday and 30.8 million Sunday subscriptions).<sup>101</sup> This same research suggests most of the tangible newspaper business is fueled by the senior citizen population which is obviously not sustainable for the long-term survival of the tangible media medium.

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<sup>100</sup> Michael Barthel, "Despite Subscription Surges for Largest U.S. Newspapers, Circulation and Revenue Fall for Industry Overall," Fact Tank (Pew Research Center, June 1, 2017)

<sup>101</sup> Michael Barthel, "5 Key Takeaways about the State of the News Media in 2018," Fact Tank (Pew Research Center, July 23, 2019)

## **Another Form of Print Media**

In addition to the newspaper industry having a substantive effect on activation and polarization there is another form of print media with similar effects on American voters. The only difference is this media is specifically designed to activate partisan feelings rather than presenting itself as unbiased representations of facts. Of course what this refers to are campaign mailers or leaflets. This popular weapon on the campaign trail is used rather frequently by office seekers on nearly every level of government because of their low cost, efficacy, and accessibility to voters. Targeted mail campaigns cost cents per sheet and can be delivered to basically every voter through the mailbox. It may not be overwhelmingly apparent to the average voter but the fact is direct-mail allows political actors to dramatically improve one's chances on Election Day because of the psychological, economical, and universal nature of the product. Combining these factors make for a formidable tool in the never ending political fight inside America's neighborhoods. This is why direct-mail firms still thrive today despite the apparent monopolies both television and the Internet have over campaign advertisements and fundraising.

## **Direct Mail Psychology**

National, state, and local campaigns continue to use mailers in their electoral strategies for the reasons listed above, such as cost and voter accessibility, however there are also psychological components to direct-mail. The first two concepts that are important in understanding the efficacy behind mailers is the Empowerment and Threat Theories. These sociological/political theories were hypothesized to help us better understand the reasons why voters behave the way they do during elections. Their be-

havior is determined by the geographic, racial, partisan, and socio-economic characteristics of where individuals voters live. In fact these theories have the same outcome, but for different reasons. The work of scholars Michael Barber and Kosuke Imai help illuminate these two psychological principles and their relevance to campaign tactics. First, the Empowerment Theory describes how voter behavior and engagement (the output) is subject to change based on the demographic or partisan identities associated with their neighborhood (the input). Barber and Imai write:

First, the empowerment theory states that voters turn out more frequently when surrounded by people like them...The theory also implies that when individuals are surrounded by those who possess dissimilar demographic characteristics or differing political views, they are predicted to turn out less often. This depressing effect on the turnout of neighborhood minorities may arise due to the natural desire to avoid conflict, such as encountering neighbors with differing views at a polling place.<sup>102</sup>

This theory suggests a more tribal nature associated with voting. Essentially, voters are more or less likely to vote based off comfort or cohesion within their community politically or culturally. We as humans traditionally enjoy being accepted into larger groups which believe and behave in the same ways we do. This notion is simply extrapolated to politics and the effects of social acceptance leading to fluctuations in voting behavior.

The other theory germane to this discussion about voter motivation and the corresponding neighborhood effects is the Threat Theory. Similar to the Empowerment Theory, the Threat Theory is a sociological way to predict voter turnout and motivation

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<sup>102</sup> Michael Barber and Kosuke Imai, "Estimating Neighborhood Effects on Turnout from Geocoded Voter Registration Records," Center for the Study of Democratic Politics (Princeton University, January 2014), p.4)

in certain demographics. The difference between the two lies in the prior circumstance. Barber and Imai explain that this theory is predicated on a feeling of self-preservation.

The two write:

[T]he threat theory pioneered by V.O. Key who, more than a half century ago, found that white voters in predominantly black counties turned out at significantly higher rates than whites in predominantly white areas. According to this theory, neighborhood minorities see majority groups as a threat and are compelled to participate in politics in order to compete for limited resources and representation.<sup>103</sup>

This theory, similar to the Empowerment Theory, results in overall increased voter participation. While this theory was developed along racial lines it has since been utilized to describe any minority group in a demographic. In this case the term, “minority group” does not always refer to the contemporary definition associated with racial minorities in this country. Rather, this term can refer to any racial, religious, or any other socio-economic group which happens to be in the minority of the population in a certain locality. The cause of this is the desire to secure more resources and representation within a certain locality in order to prevent a tyranny of the majority like James Madison warned in *Federalist 10*.<sup>104</sup> The unbridled power of the majority can threatened the desired representation citizens want from their government. Therefore, the minority groups tend to vote in higher percentages than the majority.

One of the things these two theories have in common is how they are weaponized during direct-mail campaigns. Unsurprisingly, campaigns can gain a lot of

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<sup>103</sup> Michael Barber and Kosuke Imai, “Estimating Neighborhood Effects on Turnout from Geocoded Voter Registration Records,” Center for the Study of Democratic Politics (Princeton University, January 2014), p.5)

<sup>104</sup> Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers (Annotated): A Collection of Essays Written in Favour of the New Constitution* (Coventry House Publishing, 2015)

traction playing off of tribalist fears just like they can garner support by asking certain majority groups to protect and defend political advantages. These fears and calls to action motivate voters to get to the polls and cast support for a certain candidate or set of policy ideas. These efforts to ensure votes is tied into the last theory/strategy relevant to political movements called voter mobilization or Mobilization Theory. The theory states:

[G]iven the budget constraint faced by campaigns, they identify and choose neighborhoods with a large number of core supporters as their primary grounds for mobilization rather than blanketing the entire district with mobilization treatments. This may provide campaigns with a more cost-effective mobilization strategy than targeting co-partisans in every part of the district.<sup>105</sup>

So, political campaigns have finite amounts of time and money to push certain messaging which resonates within a certain district or demographic in order to turn out supporters of said messaging. This is where the Threat and Empowerment Theories come into play. Political campaigns test and study which policies, and corresponding talking points, provoke a poignant response within certain desired groups of voters. The next step is to then mass produce these messages, images, and policy remedies for public consumption in order to persuade targeted audiences.

### **Direct Mail Polarization and Mobilization Efficacy**

All of this information should not be too shocking to those who follow politics. After all, it seems like a pretty basic concept of campaigning. So why are these theories and practices so relevant with regards to print media? The answer comes back to overall cost and effectiveness in a digital and televised world. In a cognitive study con-

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<sup>105</sup> Michael Barber and Kosuke Imai, "Estimating Neighborhood Effects on Turnout from Geocoded Voter Registration Records," Center for the Study of Democratic Politics (Princeton University, January 2014), p.7)



ducted by the Canada Post mailers have a substantial effect on overall action due to the “motivation-to-cognitive load”<sup>106</sup>. The study describes how tangible mail ads are better received by consumers as opposed to digital advertisements done on social media. According to the report:

Direct-mail surpasses the important motivation-to-cognitive load ratio threshold of 1...advertisements that yield a motivation-to-cognitive load ratio of 1 or higher are considered the most predictive of in-market success, or likely to trigger the desired action from the consumer. In this study, only direct mail surpassed this important threshold:

- Direct-mail achieved a motivation-to-cognitive load ratio of 1.31;
- Digital media achieved a motivation-to-cognitive load ratio of just 0.87.<sup>107</sup>

Overall, in daily life, consumers see more digital ads on social media platforms like Facebook and Twitter. However, these ads have less effect on the overall action taken by consumers of all ages.<sup>108</sup> The reason for this is the fact that campaign mailers are tangible pieces of marketing persuasion delivered directly into voter’s hands. Voters then spend time analyzing this content as opposed to quickly scrolling past it on social media platforms. This yields a higher likelihood consumers will act upon these mailers politically.

This study executed by the Canada Post illuminates the psychological and cognitive effect mail pieces have on the consumer. These results suggest direct-mail marketing traditionally leads consumers to act upon this kind of messaging. However, can

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<sup>106</sup> Thomas Ramsay, “A Bias for Action: The Neuroscience Behind the Response-Driving Power of Direct Mail,” Canada Post (July 2015)

<sup>107</sup> Thomas Ramsay, “A Bias for Action: The Neuroscience Behind the Response-Driving Power of Direct Mail,” Canada Post (July 2015) p.25)

<sup>108</sup> Thomas Ramsay, “A Bias for Action: The Neuroscience Behind the Response-Driving Power of Direct Mail,” Canada Post (July 2015)

these mailers also shape or alter the consumer's perceptions of products, people, or values? Political scientists David Doherty and Scott Adler argue mailers do in fact have such an effect on voters. In an experiment conducted during the 2012 election cycle Doherty and Adler discovered positive and negative campaign mail pieces had a substantial effect on the way voters perceived the state of American politics. In the conclusion of their published work the pair assert mailers affect voters in two main ways. First, Doherty and Adler argue these ads enhance the recognition and favorability of a certain candidate seeking office. They write:

The findings we present here suggest that both positive and negative campaign mailers can affect how voters view the political world. Importantly, apart from their effects on candidate name recognition, our evidence suggests that the effects of negative and positive mailers are statistically indistinguishable. Our findings also suggest that the timing of these communications can have at least two important consequences for their effectiveness. First, the results from the first field experiment suggest that, in the early days of the 2012 general election cycle, the mailers increased the probability that likely independent voters would recognize the candidate the mailer focused on. In that experiment, we also found suggestive evidence that the mailers improved the candidates' electoral prospects by improving their standing with voters...<sup>109</sup>

This first part of their findings focus on name recognition and general favorability which is a huge electoral hurdle for candidates or, in our case, Supreme Court nominees. The job of any good Supreme Court advocacy campaign is to present the voting public with as much information and background on a particular judge up for confirmation because federal judges are traditionally not as well known as elected officials who appear on the ballot every 2, 4, or 6 years. Direct-mail helps depict a judge favorably, or

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<sup>109</sup> David Doherty and Scott Adler, "The Persuasive Effects of Partisan Campaign Mailers," *Political Research Quarterly* 67, no. 3 (September 2014): pp. 562-573)

unfavorably, to the American public at a rapid pace. Expediency is crucial in these confirmation fights because the confirmation process as a whole typically does not last as long as a congressional or presidential campaigns.

The ability to broadcast a judge's credentials and judicial philosophy at a break-neck pace is the first step in winning over the American electorate, which should in turn wins over senators. The second and more crucial step towards confirmation is the ability to mobilize voters. A senator's vote during a Supreme Court confirmation can make or break political careers. Most recently in 2018, vulnerable senators across the country were held accountable for their votes cast in favor or in opposition to Justices Neil Gorsuch and Brett Kavanaugh. Granted, these senators' entire platforms and political accomplishments were on the ballot as well. However, the Gorsuch and Kavanaugh confirmations were perhaps the most powerful political motivation for voters at the ballot box in November of 2018. As a result, Senators Joe Donnelly (D-IN), Heidi Heitkamp (D-ND), Bill Nelson (D-FL), Dean Heller (R-NV), and Claire McCaskill (D-MO) all lost their seats to challengers in large part due to their support or opposition to Justices Gorsuch and Kavanaugh. Doherty and Adler's research helps provide an explanation. These senators were explicitly targeted because of their votes in the Senate. With regard to the mail campaigns, Doherty and Adler state that both positive and negative mailers both mobilize and turn out voters. They write:

Our evidence also supports the claim that negative advertising—at least negative direct-mail advertising— mobilizes voters rather than demobilizing them. This is consistent with the one previous study we are aware of that has examined the effects of negative direct-mail on turnout. Positive mailers also appear to stimulate intent to turn out. Notably, these effects were identified both early and late in the campaign cycle. Thus, our findings are consistent with the claim

that although communications sent late in a campaign may be unlikely to alter potential voters' views about candidates, they can affect broader assessments of the political environment and, thereby, their eagerness to participate.<sup>110</sup>

The research indicates mail campaigns not only help with overall identification of candidates and nominees, but also drive voter turnout and political participation. With this two-pronged approach political committees and advocacy groups can dramatically affect election and confirmation results. This power to boost name recognition and turnout coupled with the psychological change mailers have on voters makes for a formidable political weapon both political parties wield during crucial confirmation votes and elections.

Putting both of these studies together helps explain the contemporary direct-mail strategy utilized by political actors across this country. With a limited amount of time and capital direct-mail provides a much needed service in the field. The psychological motivation and political empowerment are effective enough tools to wage a successful campaign because of their ability to further raise both name recognition and platform identification. This excites voters to mobilize through both positive and negative messaging and triggers a desired reaction from the consumer. These outcomes lead to an overall increase in party identification and overall partisanship because no matter what is published on these mailers the result is political activation and entrenchment because of the science behind the practice. This activation is not just seen at the ballot box. Rather, this polarization can occur at any time there is a high volume of mail content provided to consumers. In our case, one time of definite high mail content occurs during Supreme Court battles. This polarization is seen through observable

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<sup>110</sup> David Doherty and Scott Adler, "The Persuasive Effects of Partisan Campaign Mailers," *Political Research Quarterly* 67, no. 3 (September 2014): pp. 562-573

action rather than just words on a certain post or message board because direct-mail has such a potent effect on the mind. The research conducted by the Canada Post concluded its study by stating direct mail was the most successful form of tangible marketing to incite action on behalf of the consumer. The report finds:

Direct-mail...taps into deep-seated neurological processes that trigger action. It also offers the creative versatility to amplify action by appealing to senses beyond touch. It is better suited to close the marketing-sales loop, or the gap between interaction and action.<sup>111</sup>

Bridging the gap between interaction and action is the goal of any advocacy campaign or confirmation battle for the Supreme Court. Without this, confirmation fights are doomed to fail because the lack of voter enthusiasm. It is clear mailers play an essential role in the overall divide between political ideologies and any subsequent activation. However, there is one last reason mail campaigns are utilized and that is the overall cost of the operation is unparalleled in modern American politics.

All of this data on direct-mail is important because it is emblematic of why mail reigns supreme in the campaign world. National campaigns benefit from this strategy especially during efforts to pressure senators to vote in favor or against certain Supreme Court nominees. When analyzing the cost of publishing persuasive messaging across forms of media mail efforts come in as the cheapest product. This allows national partisan committees, political action committees, and other interest groups to blanket targeted areas with mailers to energize voters and potentially sway crucial confirmation votes. The average cost of a campaign mailer can vary between \$0.30-\$1.00 per piece. This is contrasted to the cost of a 30-second nationally televised advertise-

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<sup>111</sup> Thomas Ramsay, "A Bias for Action: The Neuroscience Behind the Response-Driving Power of Direct Mail," Canada Post (July 2015), p.28)

ment which, according to Statista, on average costs about \$105,000.<sup>112</sup> This number does not take into account the additional cost in production time it takes to create and execute such a television ad.

As for social media cost the dollar amounts vary widely depending on a myriad of different factors such as scope and size, intended audience, duration of the advertisement, and numerous other metrics. According to Facebook, certain ads can mirror the cost of mailers ranging from a few cents to a few dollars per ad but again it depends on the type of targetting and the type of ad. The important thing to remember about social media ads however is the amount users experience on a daily basis. Additionally, campaigns do not just use Facebook. Instead they advertise with Twitter, Instagram, Pinterest, YouTube, and numerous other social media forums to spread their message. Adding up all these costs can make a substantial dent in any advocacy campaign's bank account. Plus, while digital ads are delivered directly to a consumer's phone or other electronic device these ads still lack tangibility which the previous research by the Canada Post tells us goes a long way in consumer activation. Social media ads can also be ignored as users have the ability to simply scroll past certain messages while mail has to be retrieved, examined, and eventually disposed of. The polarizing nature of campaign mailers is only compounded by the volume of mailers utilized during elections or, in our case, confirmation processes. Throughout a national election cycle state parties and national committees alone usually put out a dozen different mailers with twelve different messages attacking or defending certain candidates and nominees from every angle. Not to mention these dozen or so mailers messaging

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<sup>112</sup> A Guttman, "Average Cost of a 30-Second Commercial on TV in the United States from 2014 to 2019," Statista (November 2019)

can be altered to play better with certain neighborhoods with relative ease. For these reasons and more it is clear campaign mailers have an effect on voters in targeted neighborhoods across the country.

In closing, direct-mail campaigns offer an advantage to any committee or advocacy group that wants a favorable result during a Supreme Court confirmation process. These studies on psychological effectiveness, candidate recognition, voter activation and mobilization, and overall cost imply direct mail is a more than effective weapon used when fighting for a seat on the bench. In addition to all these advantages mailers can also be used to send fundraising requests, personalized letters from candidates, and voter registration forms and instructions. This type of direct-mail advocacy was used to aid the confirmations of Justices Neil Gorsuch and Brett Kavanaugh. These campaigns were funded with millions of dollars from conservative leaning groups like Americans For Prosperity, the Judicial Crisis Network, the Heritage Foundation, the National Rifle Association, and numerous other right-leaning organizations with large bank accounts. Not to mention the Republican National Committee and other Republican committees and PACs also aided the efforts to get these justices confirmed to the Court.

Part of this money went to fuel expansive mail campaigns in states with vulnerable incumbent senators. On a similar note, national liberal groups funneled millions of their dollars to sink these same confirmations. To this day, because of the nature of our financial disclosure laws, the American public does not know the extent of exactly how much money was spent on mail campaigns or spent on the confirmations campaigns

in general.<sup>113</sup> We do know that regardless of the exact dollar amount, there were millions upon millions of dollars spent by both sides attempting to confirm or reject these presidential appointments to the Supreme Court. Once again, all this money was used to sway, excite, or enrage voters into action on the federal level adding to the overall partisan sentiment felt in the United States.

One Supreme Court nomination process we have more research and data on is that of Judge Robert Bork in 1987. Perhaps one of the most infamous Supreme Court confirmation attempts, Judge Bork's swift defeat in the Senate is seen as the academic example of the power outside interest groups wield within the confirmation process. While there were many factors that led to the eventual defeat of President Reagan's nominee, one tactic used to ensure Judge Bork would not serve on the bench was an expansive direct-mail campaign orchestrated by powerful interest groups. Political titans like the American Civil Liberties Union (ACLU) and Planned Parenthood waged a ruthless grass-roots campaign to encourage voters to agitate senators whose vote was not set in stone. The result of these efforts resulted in senators' offices being flooded with letters and calls demanding they vote down Judge Bork's confirmation. According to authors Ronald Hrebenar and Ruth Scott the direct-mail campaign devised by multiple interest groups made voicing voter opposition simple. The pair write:

The opposition to Bork used its grassroots direct-mail campaign to stir up letters to Congress opposing Bork and as a golden opportunity to recruit new members and raise funds. The People for the American Way direct-mail campaign to members and potential members included materials on Bork and his record, two reprinted "Official Congressional Communications" urging rejection to the two

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<sup>113</sup> Anna Massoglia and Kaitlin Washburn, "Only a Fraction of 'Dark Money' Spending on Kavanaugh Disclosed," Open Secrets (Center for Responsive Politics, October 24, 2018)



US senators from the sender's home state, and a "Keep Bork off the Court reply memorandum" facilitating a monetary contribution to the organization. The American Civil Liberties Union direct-mail communications were almost identical to that of Planned Parenthood's in terms of format.<sup>114</sup>

The time-consuming aspect of contacting elected officials in Washington is the process of finding the right address, drafting a letter, and then mailing said letter to sitting senators. Instead, in order to expedite this process, interest groups pre-arranged their direct-mail pieces to voters thereby eliminating this general inconvenience. Judge Bork's record and apparent political injustices were then displayed on a mailer and sent into American homes demanding action.

Additionally, there were instructions on how to contact one's home state senators to voice disapproval. The goal of these campaigns was to hold elected officials' feet to fire and reiterate the political consequences that accompanied a vote for or against Judge Bork. This tactic still holds true now as it did with Judge Bork during the Reagan Administration nearly 40 years ago. The campaigns to confirm or reject Justices Kavanaugh and Gorsuch operated in very similar ways. President Trump's two nominees for the bench were targeted in just the same way. The only difference was these nominees were eventually confirmed after their elongated messaging battles in front of the American public.

## **Conclusion**

Overall it is clear tangible, print media has a profound effect on the voting public. Consider the expansive and expensive nature of Supreme Court confirmation battles, not to mention the importance of achieving a majority on the nation's highest court.

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<sup>114</sup> Ronald Hrebenar and Ruth Scott, *Interest Group Politics In America*, (Taylor & Francis, 2019), p.5)

The reality is committees, advocacy groups, and outside interests have a vested stake in getting certain people onto the Court. Therefore, these groups will employ any and all effective tactics to turn public opinion in their favor. Print media provides an avenue for such achievement. At the same time, print media itself inherently incites partisan feelings and is a tool used to weaponize privately held beliefs into political action. With newspapers we see that this industry engages in partisan Supreme Court fights through media consolidation, political leanings and bias in reporting, and the ability to constantly contact voters. It is also evident that newspapers, on both the national and local levels, have the ability to alter readers' view of government. This altered view incites and encourages readers to demand change on all levels of government because of what they read in their daily newspapers. Despite the downturn in traditional print newspaper business the industry as a whole still remains a staple of American political culture. This fact has never been more true considering the current President of the United States actively battles with and attempts to discredit large news organizations whenever he can.

Direct-mail campaigns are only different from newspapers in that they are designed and marketed to campaigns as partisan tools. The same sort of constant exposure, tangibility, and psychological power is seen in direct-mail during election seasons or when a judge has been nominated to the bench. Mailer's ability to invoke tribal, partisan reactions is only half of their appeal. The other half is their ability to persuade and motivate voters to demand action from their elected officials. While direct-mail is helping form political opinions it is simultaneously increasing name recognition and platform sympathy with the average American. These are the voters who may not have the

faintest idea what certain judges stand for or even a judge's name. Direct-mail helps to first educate the electorate and then convert them into loyal supporters. This conversion is secured by playing off tribal fear, invoking a call to action, or demanding voter loyalty during a time of great importance. All of these tactics have been and will continue to be utilized through direct-mail during the highly partisan debate over Supreme Court nominees.

Regardless of form, print media is guilty of further dividing this country on political lines. This medium is incredibly effective at informing, persuading, activating, and motivating the American public during Supreme Court confirmation battles. Whether Americans are willing participants or not, the fact is we are constantly exposed to these print-based partisan activities during the confirmation process required in the Senate. At the end of the day, and after millions of dollars are spent, these two major tools could either be the saving grace or instrument of defeat for any nominee to the Supreme Court of the United States of America.

## **Closing Remarks and Discussion**

Perhaps the one lingering question left after this research is to ask ourselves if we as voters even noticed our daily information was tampered with and weaponized to alter our political behavior. In many instances news organizations go to great lengths to protect their corporate interests by tilting the way news is presented to consumers. Whether these interests are financial or political does not matter for our purposes. The fact is media companies across the televised, digital, and print mediums all play a role in politicizing information presented to the American public. When the stakes are raised, and the country is in the midst of national elections or confirmation votes, these forms of media play a pivotal role in ramping up partisan sentiments with its consumers. The rise of the Internet and the changes in American culture has forced media to similarly change the way they do business. These changes have put news consumption and commentary at the center of daily life in a way that news has not been in the past. Author Diana Owen put it best by saying:

These shifts in the media environment are altering the ways in which candidates contest for office, journalists cover elections, political parties and organized groups manage their campaign presence, and voters engage in the political process. To be successful, candidates must run sophisticated campaigns that embrace both established and novel media strategies.<sup>115</sup>

This fact is just as true during confirmations to the Supreme Court. Presidential nominees for the Court team up with national parties, outside interest groups, media organizations and pundits, as well as grass-roots activists in order to garner support for their

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<sup>115</sup> Stephen Medvic and Diana Owen, *New Directions in Campaigns and Elections* (Routledge, 2011), p. 145)

confirmation. These high-pressure media battles are fought on every platform and medium available to create a positive narrative.

Opponents of confirmations will also engage in prolonged, expensive media campaigns in the hopes of sinking nominations to the bench. These messaging battles force senators to listen to their constituents' wishes and cast votes in favor or in opposition of confirmation. However, throughout this paper we have explored the reality of bias lingering within the American media industry. The political desires of actors within and outside of the industry frequently attempt to weaponize media to achieve a beneficial result regarding the Court. We have seen that no medium is without fault and in fact all three are guilty of furthering the political divide in this country.

In television media we see the effects of polarization can be traced back to many different sources. The first important attribute of television which leads to overall politicization is the amount of TV Americans watch. Prolonged daily television consumption has resulted in a culture where Americans are fixated on watching television programming for numerous hours a day. Tuning in more frequently has put TV-based media entities in a unique position to alter voter behavior unsuspectingly. This increase of time spent in front of the TV has presented an opportunity for national committees, political campaigns, advocacy groups, and other outside interest groups to broadcast their persuasive messages directly into the homes of the American public. This practice has many benefits. Firstly, continued TV consumption has a profound psychological effect on the human brain. The research presented clearly indicates constant exposure to certain graphics, sounds, and dialogue can alter the viewer's perception on certain issues. This is why positive and negative TV ads are run during confirmation battles,

particularly in states where sitting senators are vulnerable or persuadable. The combination of imagery, messaging, and sound all have an observable effect on voter identity and activation. Political actors spend millions of dollars and countless hours creating TV ads in order to excite supporters and urge senators to vote a certain way. The manner in which Americans fixate on TV creates a profound method of persuasion and polarization.

The proliferation of TV consumption has also presented an opportunity for the elected officials themselves. The increase in viewership offers more opportunities for politicians to get in front of the camera thereby increasing their overall recognition with the American electorate. There is an old joke in politics which claims elected officials will never turn down a photo opportunity. This saying also holds true when talking about airtime on a news network broadcast. Throughout the confirmation process, particularly during the confirmation hearing in the Judiciary Committee, senators never miss an opportunity to get on camera. The longer the camera is focused on them, the less coverage is given to their opponents. Similarly, frequent televised media appearances allows for more time to be dedicated to favorable partisan messaging. With regards to the confirmation hearing, senators spend time asking questions and reading statements which will win them favor with their constituencies back home. These hearings also provide senators with powerful content depicting their resolve during highly partisan times. Plus, sensationalizing certain confirmations or nominees specifically can gain a lot of traction in modern American media. This content can then be used in ads of their own to secure re-election or when seeking higher office. Overall, there is only a finite amount of programming time allocated per day so senators are

constantly competing for airtime to push a political agenda. This fact means television programming is constantly flooded with coverage, analysis, and interviews with key political figures. Increasing the frequency of partisan messages similarly increases the partisanship of the viewers.

News consolidation is the last source of polarization for our discussion on television. In the never-ending struggle for profit, media actors have spent billions consolidating the market for their overall corporate success. These conglomerates have been focusing on acquiring local stations as well as national programming and channels. Their goal is to receive as much viewership as possible to increase the overall health of their businesses. This consolidation also comes with inherent bias and glaring problems for our democracy. The more televised media is consolidated, the more the power of messaging and programming is held with just a few corporate executives with political and financial stake in the federal government. Specifically with the Supreme Court, media titans have vested interests in promoting justices who are sympathetic to their corporate and ideological values. Therefore, these media actors engage in biased broadcasting, messaging campaigns, and political activity at the highest level of government. Unsurprisingly, this means it is often in the best interest of media executives to support or reject certain nominees for the bench. These political battles are fought through the media and are also frequently about the media in general. We see this fight occurring right now between the FCC and the federal judiciary about media ownership in local media markets. It is also unlikely this battle for media consolidation will end anytime soon, thereby forcing politicians and political actors to pick sides.

All these sources of bias and partisanship within the television medium has forced further political entrenchment within the United States. The sad reality is many of the FCC rulings, corporate mergers, and bias broadcasting happen without the average American noticing. One way to combat this polarization is for citizens to be more vigilant and demand reform from elected officials. A good place to start would be within the Federal Communications Commission. Commissioners appointed by the president should be scrutinized and researched just as much as senators do for Cabinet Secretaries. However, the voting public tends to focus on the big-name actors within administrations and pay less attention to smaller federal bureaucrats. A renewed focus and education of the agencies and commissions within the Executive branch would help prevent corporate consolidation, biased broadcasting, and programming that manipulates unsuspecting viewers. Nevertheless, televised media does have an observable contribution to polarization during the Supreme Court confirmation process.

Digital media unfortunately behaves in a similar way to televised media. Political actors take advantage of America's fixation with social media in order to push partisan messages displayed on computers, tablets, and smart phones instantaneously. Social media platforms like Facebook and Twitter have millions upon millions of daily users all across the world. The social media business concept is interconnectivity which allows users to "follow" or "friend" users all over the world. This media also allows for the instantaneous dissemination of information, policy agendas, or general thoughts. These posts can then be similarly shared at an instant, thereby broadcasting posts to even more users across the Internet. This interconnectivity and rapid nature of social media is naturally appealing to politicians and political actors in order to deliver favorable



messaging to American voters. Particularly, political entities utilize social media because the majority of social media users are young, impressionable voters who can be swayed through targeted persuasion.

Social media allows for national committees and interest groups to identify, target, persuade, then activate users through a complex, and cheap, method of advertising. Persuasive ads, both positive and negative, operate in a similar way to televised ads in that they typically display inspiring patriotic calls to action. These actions can be to vote, support a candidate, donate time and money, or support a nominee to the Supreme Court. Social media allows complex political issues to be simplified into 10-second video ads delivered directly to voter's profiles. Due to the traffic and inordinate amount of time Americans spend online, these ads have remarkable success within a country with a limited attention span. One major advantage social media has over other mediums is physical distancing. Users can share, comment, or post information without having to psychically interact with other users. The research presented in Chapter 2 shows users take on a different online personality than they do in public because there is less confrontation or need to defend political positions in-person. This detachment from reality encourages users to broadcast their beliefs often and without remorse. The result is users' online personas are increasingly more partisan than their personas in the real world. This fact allows for, and in fact encourages, hyper-partisanship because there are seemingly no consequences for broadcasting political ideologies on the web.

This lack of in-person confrontation also encourages users to follow or subscribe to politicians and nominees with similar political beliefs. The beauty and the downfall of social media is users decide who they wish to connect with online. Often

times this means users only follow or subscribe to political actors who share their interests, essentially blocking out all opposing views when online. This online sequestering furthers partisanship because all of the news, posts, and comments users see are politically favorable which subconsciously affirms political positions. If a user is only surrounded by values and ideologies which align with their own they will stop seeking objective truth and will be tethered to subjected political views.

Political actors benefit greatly from online users limiting their association with users on the other side of the ideological spectrum. In fact, this sort of association acts as an indicator for how users will inevitably vote. The information and associations users broadcast online allow national political apparatuses to identify potential donors, voters, and volunteers for political activity. The Internet has led campaigns and committees to vastly expand their list of donors and volunteers because they were able to make contact online as opposed to in-person. This saves inordinate amounts of time and money that can be redirected towards the never-ending political battle at hand. Nothing better exemplifies the benefits of waging political battles via social media than the actions of Cambridge Analytica in 2016. In Chapter 2 we examined how the Trump campaign weaponized Facebook to identify and target undecided voters with hyper-partisan advertisements in order to coerce them into supporting then-candidate Trump. These advertisements often projected dire consequences for America if Secretary Clinton won in November of 2016. Users were individually targeted by the campaign with a specific message that would most likely invoke a partisan response. In other words, Cambridge Analytica examined user profiles to see what issues they cared most about. Then, the Trump campaign would blanket a specific user's Facebook News Feed with

ads on specific political issues. This process was replicated for millions of American voters, especially in targeted swing states like Michigan, Ohio, Pennsylvania, Florida, Wisconsin, Arizona, North Carolina, and New Hampshire.

The Cambridge Analytica experiment provided us with a perfect representation of how social media is an avenue for hyper partisanship. A single company figured out voter behavior by examining user actions and associations online, targeted these voters with the most relevant political messaging, and then translated all of this into electoral victories in coveted swing states. Cambridge Analytica exposed social media as a vessel for partisanship. After 2016 we saw how social media constantly contributes to partisan ideology because information users provide freely is consolidated and weaponized against themselves. The front line of the political struggle is no longer within American neighborhoods or on TV screens. Rather, because of the daily, continuous use of social media, this battle is now waged online. Political actors behave like consumers in the sense that they constantly buy user data from platforms like Facebook and Twitter in order to better understand individual voter behavior. This information is then utilized during election season or confirmation battles and voters are targeted because of their online activity. Cambridge Analytica itself may be gone, but the practice carries on to this day.

Another interesting outcome of the Cambridge Analytica case was a better understanding of the Trump campaign social media juggernaut. Undoubtedly, social media was a huge reason why Donald Trump is sitting in the Oval Office and not Hillary Clinton. The Trump campaign vastly outspent the Clinton team on social media to engage more voters in key electoral areas. President Trump, the Republican National

Committee, advocacy groups, and numerous PACs continue to take notes from the successful 2016 campaign playbook in order to wage a messaging war online. This machine was on full display once again during the contentious confirmation battles of Justices Gorsuch and Kavanaugh. Republican strategists figured out in order to win these national elections and confirmations they had to change the narrative across every medium. Therefore, social media engagement was once again used as a weapon to excite supporters and incite action from members of the Senate. Don't forget, five incumbent senators lost their seats in the 2018 midterm election in large part because of their votes in favor or against Justices Neil Gorsuch and Brett Kavanaugh. With the confirmations of Gorsuch and Kavanaugh we also saw the dramatic influx of dark money into the political machine to create online advertisement and fundraising content. These ads mirrored the behavior of past ads run by the Trump campaign and White House media teams which was a huge factor in the eventual success of both Associate Justices of the Supreme Court.

Chapter 2 demonstrates social media, similar to television, can directly affect partisan identities and action with regards to the Supreme Court. The ubiquitous nature, instant communication, utilization by political actors, psychological effects of persuasive advertising, and the user vulnerability associated with social media platforms makes for a dangerous combination. These aspects of social media also make it hard to argue this medium does not contribute to overall political division within this country. All that remains now is for the American public to become more vigilant and more informed to combat this politicizing online.

For starters, there are a few things that could help stem the tide of user data weaponization. The first, and most obvious, step revolves around being more aware of our digital footprint. Every post, search, purchase, comment, or any other action is documented and available for purchase by national political actors. Therefore, it is important to limit the information we willingly surrender to big social media companies and secure personal information as much as possible. Leaving the smallest digital footprint is our best chance at fighting off digital invasion of privacy. While on the topic of privacy, one way to help prevent corporate data mining of our personal information is to demand digital privacy laws from Congress. After Cambridge Analytica there was an expansive social movement to enact privacy laws to prevent these actions in the future. As of now, there has been no such legislation signed into law. It is important to keep in mind that what Cambridge Analytica did was not illegal, but it was incredibly invasive and dishonest. Cambridge Analytica's success came from analyzing our own actions on social media platforms. We were not coerced or manipulated into posting or commenting our thoughts on these digital mediums. Rather we were willing, but unknowing, participants to a much larger, national political operation to elect a new president. This predatory targeting experienced in 2016 will not relent because its effectiveness in electing President Trump. How we behave online going forward will determine who sits in the Oval Office after Donald Trump.

Lastly, print media is also implicated in contributing to furthering partisanship during Supreme Court confirmation processes. While print media shares a lot of the same partisan actions within both social and televised media this form of tangible media emulates that of televised media's polarizing effects. This is true because the giant

media conglomerates who contribute to political division traditionally do not exclusively own either newspapers or television programming. Instead these conglomerates tend to engage in what is called media cross-ownership. Simply put, media cross-ownership is the consolidation of media entities across different mediums. Corporations cannot own the Internet only certain websites, therefore these cross-ownership deals usually include television, newspaper, and radio mediums. In both the television and newspaper industries we often see the same parent company owning news outlets in television and print media. This cross-ownership limits the number of news outlets with opposing views and practices thereby ensuring a nearly uniform display of political coverage. Media scholar James Ferguson describes how cross-ownership hurts competition thereby allowing for a few companies to control news in nearly every form. He writes:

The continuing decline in the number of cities with competing daily newspapers, the significant increase in the number and size of newspaper chains owning two or more daily newspapers published in different cities, and the increase in local newspaper cross-ownership of radio and television stations in the same city are frequently cited as evidence of a deteriorating competitive situation and of the need for corrective government action, especially by the FCC.<sup>116</sup>

This corporate push to overtake the media means more of the news lacks independent thought and analysis. Rather, corporate interests and ideology is displayed to viewers and readers in a way that furthers political or financial goals. This lack of opposition in the news means consumers are exposed to fewer schools of thought or interpretations of political activity. During confirmation battles or national elections this is politically

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<sup>116</sup> James Ferguson, "Daily Newspaper Advertising Rates, Local Media Cross-Ownership, Newspaper Chains, and Media Competition," *The Journal of Law and Economics* (1983), pp. 635-654)

disadvantageous because if there is no diversity of thought then there is no room to win over voters. Viewers or readers are instead solely exposed to corporate beliefs and their interpretation of the news.

It is important to understand just how far media consolidation goes in this country. In a study conducted by the Center for Innovation and Sustainability in Local Media the state of the American media industry is far more consolidated than previously thought. The study states, “As of a few years ago, it has been reported that nearly 90% of the entire American media industry is mainly owned by seven media and investment conglomerates.”<sup>117</sup> A mere 10% of American media is owned and operated outside of these particular corporate umbrellas. This staggering statistic should encapsulate the problem of media consolidation and cross-ownership. Seven media companies control nearly every aspect of the media. Realistically, a small number of media executives own American news. With that kind of power, media executives can alter elections and confirmations based on what they put on their broadcasts or headlines. Whether these corporations mean to polarize American political sentiment or not, the truth is their expansive reach within media alters consumer perception no matter what the message is.

While the newspaper industry does emulate the television industry in regards to consolidation and ownership issues, print media has polarizing effects of its own. First, the research on local newspapers’ ability to motivate voters suggests a larger circulation size does not necessarily mean a larger polarizing effect. In fact, the research suggests an increase in local newspaper subscription has a profound effect on political activity and demand for government accountability. This increase in civic engagement is

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<sup>117</sup> “The Rise of a New Media Baron,” Center for Innovation and Sustainability in Local Media, (University of North Carolina, 2019)

not limited to the local or state levels. Rather, a more informed electorate yields more political engagement on the federal level as well.

One major catalyst for all of this political activity is the continued subscription to local newspapers. Local newspapers are not the only papers elicit partisan sentiments. National newspapers are similarly known to further political divide in this country. What is more common with national newspapers however is on the national level we see bias and business often trump objectivity. National newspapers pander to their subscribers by skewing coverage in favor of their preferred party and candidates. A further look into their editorial board members as well as their journalism staff reveals an overwhelming bias towards liberal ideologies. Nationally renowned journalists from dozens of major newspapers gave generously to Secretary Clinton's 2016 presidential campaign in the hopes of securing her run for the White House.<sup>118</sup> Not to mention almost every large national newspaper's editorial board endorsed Hillary Clinton, with the exception of two smaller publications. The Hill reported:

Republican presidential nominee Donald Trump has received fewer endorsements from the editorial boards of the nation's largest newspapers than any major-party presidential candidate in history. Among the top 100 largest newspapers in America, just two — the Las Vegas Review-Journal and the Florida Times-Union in Jacksonville — endorsed Trump.<sup>119</sup>

It is unreasonable to expect that in light of these endorsements reporters, editors, and commentators were then supposed to go about their daily lives reporting the news objectively. This systemic political preference at the heart of the newspaper industry in-

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<sup>118</sup> Michael Beckel and Dave Levinthal, "Journalists Shower Hillary Clinton with Campaign Cash," Colombia Journalism Review (The Center for Public Integrity, October 17, 2016)

<sup>119</sup> Reid Wilson, "Final Newspaper Endorsement Count: Clinton 57, Trump 2," *The Hill*, (November 2016)



stills little confidence these reporters would be able to cover partisan adversaries, in this case President Trump and his platform ideas, in a favorable and fair light. These endorsements were not just shows of support for Hillary Clinton as a candidate; they were also endorsements of her vision for the federal government. A large part of her campaign platform, as is true will all federal campaigns, had to do with the Supreme Court and the kinds of justices she wanted on the bench. These seemingly endless gestures of support towards liberal ideas and candidates means there is less space in print media for contradictory political thought. Consolidation and inherent bias all but guarantee a united front from the newspaper industry against Republican candidates and ideologies. These actions play a considerable role in furthering partisan divide amongst readers.

Campaign mailers also have a profound effect on partisan identity and activation when discussing the Supreme Court. Research suggests campaign mailers invoke an observable psychological response on the part of the consumer. The graphics, frequency, tangibility, messaging, and direct delivery are all components in the overall persuasion and mobilization successes of campaign mailers. This literature raises overall name recognition, highlights ideological stances, and includes a call to action. Additionally, direct-mail's cost beats that of social and televised media advertising efforts. In lieu of television and digital ads that can be put a dent in any bank account, direct-mail pieces cost a few cents per page. This allows for advocacy campaigns to carpet neighborhoods with persuasive literature in favor or in protest of certain Supreme Court nominees delivered right to voters' front door.

While direct-mail campaigns are inherently political and the business has shrunk in part because of the rise of the Internet this does not mean the practice is disappearing from American political strategy. On the contrary, issue groups and PACs spent millions in targeted direct-mail campaigns during the confirmations of Justices Gorsuch and Kavanaugh. Most of the donors to these advocacy campaigns still are unidentified as dark money flooded organizations on both sides of the aisle. Numerous groups aiding or combating the confirmations of these Associate Justices of the Supreme Court in expansive direct-mail campaigns directed towards voters in states with vulnerable senators. The goals of these campaigns were to inform the public on the judicial philosophies of the nominees, convince voters to support or oppose then-Judges Gorsuch and Kavanaugh, and to hold their senators accountable on the day of the vote.

In the end, the confirmation battles for Justices Gorsuch and Kavanaugh illuminate the drive of political actors across the country when filling Supreme Court vacancies. While this thesis often focused on these past two confirmations to demonstrate the level of partisanship in response to media activity the fact is this process has been going on for many years. Judges Bork and Garland are additional examples of other judges whose confirmations were rejected or stifled at the onset. Media campaigns played a substantial role in both of these failed confirmations. The point is media polarization affects both parties, makes it harder for any political reconciliation or bipartisanship, and pollutes the core principle of media objectivity.

### **Further Research and Final Thoughts**

Despite attempts to consolidate as much relevant information on the media's role in politicization of the Supreme Court there is still one area of study that could bet-

ter aid this research. The research focused on the brick and motor establishments of American media as opposed to the newer forms of individual media production gaining popularity. Author Diana Owen noted this cultural shift we are experiencing in media gives more of a voice to the people as opposed to pundits. She writes:

[Journalists] have also adopted the personalized style of citizen journalism, and practice their craft in both traditional and new media venues. Voters, once relegated to the sidelines by traditional media, have become more active consumers, producers, and disseminators of campaign messages.<sup>120</sup>

While television, social, and print media basically comprise most American media engagement one industry was not represented in this work. This thesis did not consider the effects radio programming or digital music streaming service have on listeners.

While radio programming has dramatically declined since the rise of television, millions of Americans still listen to the radio or music streaming services on a daily basis. These platforms still have the ability to run campaign advertisements on behalf of Supreme Court nominees. FM radio and digital music streaming services have the ability to play political ads in between music programming. Certain audiences in certain markets are targeted to boost voter turnout or to incite action in regards to a Supreme Court confirmation vote. Digital music streaming companies provide a commercial free service but still maintain banners and chyrons on their pages that can be purchased. This particular tactic is used to especially target younger voters during highly political times.

Another attractive component of this media evolution for younger voters is content creation sources. Anyone with a cameraphone can now produce content and political commentary. User channels, podcasts, and videos can be uploaded online for free

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<sup>120</sup> Stephen Medvic and Diana Owen, *New Directions in Campaigns and Elections* (Routledge, 2011), pp. 145-146)

and can be shared with anyone on the Internet. AM and XM radio broadcasts and podcasts flood the market with political commentary listeners tune into. Programs like NPR and expressly political personalities like Rush Limbaugh are just a couple examples of platforms with large audiences across the United States. Talk-radio is still a staple of content consumption and has an impact on the perception of certain Supreme Court nominees. The podcast medium would also be an interesting topic to research because of the dramatic rise of podcast usage and popularity. Further study into this form of media could further support the claims of this thesis.

This research as a whole indicates these three forms of media are all utilized to further partisan divide within the United States during Supreme Court confirmations. This politicization is not a liberal or conservative issue. However, both sides execute media strategies to secure seats on the Supreme Court. Whether the industry itself is bias or actors within these mediums weaponize individual platforms for political success, the result is the same. Each form of media has been polluted with politics. As the cultural and political significance of the Supreme Court has increased over time the American media has changed to meet the demand of consumers and further partisan interests. The confirmation process has slowly, then rapidly, become increasingly partisan. In fact, this country's last Supreme Court confirmation was decided by the closest vote margin since 1881 and it does not appear likely these margins will widen dramatically any time soon.<sup>121</sup>

Undoubtedly we live in highly polarized times. However, changing congressional majorities or presidential administrations does not automatically mean partisanship will

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<sup>121</sup> Chris Keller, "Senate Vote on Kavanaugh Was Historically Close," *The Los Angeles Times*, (October 6, 2018)

decline as a result to these political realignments. In political science there is a theory known as the Pendulum Effect which suggests trends in culture, politics, etc., tend to swing back and forth between opposite extremes within a predictable time period.<sup>122</sup> We have seen this effect in action throughout all of American history. Party control of the White House, Congress, and ideological majorities on the Supreme Court come and go at a predictable rate. Our country oscillates back and forth between political ideologies based on the current state of culture, government, international relations, and a myriad of other factors. There is also a very famous quote from Andrew Breitbart that states, “Politics is downstream from culture” meaning the prevailing culture of the United States is traditionally represented in our government. Right now, our culture is one of political division and tribalist loyalty to party. The media is a conspirator and active combatant in our current cultural tug-of-war. The media’s promotion of hyper-partisanship in their representation of current events and political activity makes them as guilty as the political actors themselves.

The Supreme Court was designed to be a bastion of unbiased, non-political deliberation and justice. The inscription over the entrance to the Supreme Court even says, “Equal Justice Under Law”. Politics is not supposed to reach the steps of our nation’s highest court. Ironically enough, the partisan brawling within the United States Capitol is located right across the street from the Supreme Court. This kind of politics has invaded the American media and has caused the Court to become a political tool and a pillar of federal campaigning. It would be naive to suggest this process can be reversed through presenting this thesis or by drawing more attention to the problem

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<sup>122</sup> Richard Pacelle, *The Supreme Court in a Separation of Powers System: The Nation's Balance Wheel* (Routledge Publishing, 2015)

with American media. However, we owe it to this country's Founding Fathers to try and remove politics from the Supreme Court of the United States of America. The very fate of our republic hangs in the balance.

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## Education

**University of Notre Dame**      *Notre Dame, IN*      May 2017  
**College of Arts & Letters**

B.A. in Political Science with a Minor in Peace Studies

**Johns Hopkins University**      *Baltimore, MD*      January 2018 - May 2020

**Krieger School of Arts and Sciences**

Master's of Government

## Work Experience

**Colorado Republican Committee**      *Denver, CO*      March 2020 - Present

*Political Director*

- Responsible for running and maintaining our entire candidate assistance program for candidates running for State Assembly and State Senate
- Create and execute all political strategy for Colorado Republicans and the Colorado Republican Committee

**Trump Victory**      *Manchester, NH*      August 2019 - December 2019

*State Director*

- Ran all campaign operations for President Trump's re-election in New Hampshire that included staffing, budgeting, communications, voter targeting, and electoral strategy creation
- Led a team of 9 staff and managed the data, field, and communications departments of the New Hampshire Trump Victory team while working with the RNC, NHGOP, and official Trump campaign staff

**AECOM**      *Bethesda, MD*      February 2019 - August 2019

*Junior Analyst / Naval Contractor*

- Interpreted documents and equity belonging to the United States Navy to determine whether their release to the public posed a threat to national security or would jeopardize naval forces and assets
- Analyzed and took action on thousands of documents a day that cover a wide variety of topics, departments, dates, geographic locations, military hardware, and correspondence at one of the highest levels of national security

**Michigan Republican Party**      *Lansing, MI*      August 2018 - December 2018

*Deputy State Director*

- Ran our statewide field team campaign efforts and operations of 34 staffers and built our corresponding regional strategies while coordinating with RNC, NRCC, NRSC, RGA, and the Michigan State House and State Senate Caucuses
- Worked directly with our communications, research, and political departments to formulate and execute our statewide strategy

**Michigan Republican Party**      *Lansing, MI*      August 2017 - August 2018

*Regional Field Director*

- Worked with the RNC, county parties, and candidates to create and then run grassroots operations within my region of the state
- Created a regional strategy for voter targeting, volunteer recruitment, and voter contact efforts for local, state, and federal campaigns

**Office of Congressman Marlin Stutzman (IN-3)**      *Washington, D.C.*      June 2016 - August 2016

*Congressional Intern*

- Managed everyday office responsibilities such as setting meetings, responding to constituent concerns, writing press releases and other communication pieces, and helping create committee hearing strategies
- Researched legislation and the effect of certain bills on Indiana's 3rd district while helping run constituent services by leading all tours of the United States Capitol